IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP NO. 1487 of 2006

DATE OF DECISION: May 14 , 2007.

Sukhdev Singh Dhindsa and others ...Petitioners

Versus

Union of India and others ....Respondents.

CORAM: HON'BLE MR.JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

PRESENT: Mr.R.N.Trivedi, Senior Advocate, with
Mr.G.M.Umair, Advocate and Mr.H.S.Sidhu,Advocate,
for the petitioners.

Mr.Mohan Parasaran, Addl. Solicitor General of India, with
Ms.Ramea Hakeem, Advocate, for Union of India.

Mr.R.S.Cheema, Advocate General, Punjab, with
Mr.Sanjeev Sharma, Addl. Advocate General, Punjab,
for the State of Punjab

J.S. Khehar, J.

1 Captain Amarinder Singh (respondent No.6) was sworn in as the Chief Minister of Punjab, as a consequence of the success of the Congress party in the previous elections. This position has changed after arguments were heard in this case and judgment was reserved . Elections to the State Legislative Assembly were held on 13.2.2007. The Congress part did not remain in majority after the result thereof was announced.

Consequently, Captain Amarinder Singh is now no more the Chief Minister. In his place, Mr. Parkash Singh Badal has been sworn in as the Chief Minister. It is also pertinent to notice that the new Chief Minister, as a matter of fact, is the father of petitioner No.2 Sukhbir Singh Badal.

2 Sukhdev Singh Dhindsa (petitioner No.1), Sukhbir Singh Badal (petitioner No.2), Sukhdev Singh Libra (petitioner No.3), Paramajit Kaur Gulshan (petitioner No.4), Zora Singh Mann (petitioner No.5), Sharanjit Singh Dhillon (petitioner No.6) and Dr.Rattan Singh (petitioner No.8), are all Members of Parliament having been elected to the Lok Sabha, whereas, Varinder Singh Bajwa (petitioner No.7), is a Member of Parliament having been elected to the Rajya Sabha.

3 Raninder Singh (respondent No.7) is the son of the former Chief Minister Captain Amarinder Singh. Raninder Singh and Leonard A. Freeke (respondent No.15), a Dutch national, and a resident of Amsterdam, Netherlands, are stated to be old friends This friendship, according to the pleadings of this case, came to be established when the two met in 1987, during the pursuit of their respective academic careers, in the United Kingdom. According to the petitioners, Raninder Singh and Leonard A. Freeke have been meeting each other every year, even after Raninder Singh returned to India, and Leonard A. Freeke to the Netherlands.

4 Raninder Singh is stated to have conceived a project in the name of Punjab Intranet Company. The Punjab Intranet Company was allegedly planned to set up a national and international fibre optic cable network for establishing connectivity between business parks. The estimated initial cost of the project was 2 million Euros i.e. approximately

11.34 crore rupees. On account of the power at his command Raninder Singh (as his father was the then sitting Chief Minister in Punjab) along with Leonard A. Freeke are stated to have held a number of meetings, with senior bureaucrats, to discuss the aforesaid project. Captain Amarinder Singh, the former Chief Minister himself, and members of the Chief Minister's family along with Leonard A. Freeke are alleged to have held these meetings with Sanjit Sinha, IAS (respondent No.9), the then Chief Secretary of the State of Punjab, Dr. Y.S. Rajan (respondent No.10), the then Scientific Adviser to the then Punjab Chief Minister, and N.S. Kalsi, IAS (respondent No.11), the then Managing Director of Punjab Infotech, a State Government undertaking.

5 Leonard A. Freeke, it is alleged, has his own company by the name, Esquare Communications BV Limited, in the Netherlands. Esquare Communications BV Limited was required, to prepare a business plan for setting up the aforesaid project for the Punjab Intranet Company. The Punjab Government, according to the pleadings of this case, had settled to pay 1 million Euros, to Esquare Communications BV Limited for the preparation of the business plan, as well as, for the execution of the project.

6 Raninder Singh is stated to have addressed an e-Mail to Leonard A. Freeke on 14.5.2003, wherein he requested the Dutchman to associate one Chetan Gupta, who had been identified as his (Leonard A. Freeke's) local Indian partner. The e-Mail described Chetan Gupta as an old family associate (of Captain Amarinder Singh). The e-Mail also mentioned that Chetan Gupta had been chosen by the Chief Minister himself for the joint venture. The aforesaid e-Mail dated 14.5.2003 is

being reproduced hereunder:-

> "Dear Leo,
>
> I have had a long meeting with Prof. Rajan & S.K. Sinha about your project today.
>
> Briefly we have identified the local Indian partner that you are going to work with in India on your project. He is Mr. Chetan Gupta who is an old family associate of ours & has been chosen by the Chief Minister & our team to be the Indian partner for your JV with the Punjab Govt. Between Esquare and him, you shall control 51% of the JV Company, 49% shall be govt stake for a limited period & a buyout clause say after 2 years either by offloading to you guys or to the public.
>
> Since it is not possible for the government to send the cash before the end of june... I have taken the liberty of organizing the following:
>
> You & his overseas co. (must be overseas) shall exchange a letter saying that you shall reimburse the amount of 2.5 mill euro within 3 working days of receipt of consultancy fees from Pb. Government (this shall happen at the outside by 30th June).
>
> You must also formalize your partnership with him (with his Indian company....)
>
> In the meantime, early next week, he shall act as a bridging loan facilitator & fwd the amount to you. The amount shall be split in 2 or three parts details he shall work out with you day after tomorrow.
>
> Upon receipt of the govt. money you return his cash. This way the project moves on & the three member team shall arrive with you in Holland by the 23rd of June to do the report...
>
> Rajan shall brief you there on whose needs to know how much on the team (Indians). Chetan Gupta shall also arrive in Holland with them. Needless to say before they come

> Chetan shall fwd a substantial amount of the money to you, prior to their arrival. Only the difference shall be that the likes of reliance and airtel etc. shall not be in on any presentations with by you, but the JV shall negotiate with them at the appropriate time to provide handwidth capacity supply on commercial terms. Hope this sorts out your problem, can't do more at this time.
>
> Love & kisses
>
> Tikku"

7 On 28.12.2003 the Hindustan Times, in its Chandigarh edition, published an Article under the title "Curious transactions in name of Punjab Intranet?" The aforesaid Article, which is responsible for having raised the instant controversy, is being extracted hereunder:-

> "A SINGAPORE firm sends US $100,000 to a company in Mauritius, which passes on half that sum to a Channel Islands entity along with a letter saying an additional $ 900,000 is on its way. All this in the name of a company the Punjab government once proposed to set up but whose future is now in doubt.
>
> A letter dated August 12 from Mauritius-based SMX Global Technologies Services Ltd to Esquare Limited, Channel Islands, says SMX had received the money "on behalf of Mr. Ranainder Singh, your Consultant/Partner in the Punjab Intranet Company". A copy of the letter was marked to Ranainder Singh, NewMoti Bagh Palace, Patiala (Punjab).
>
> The palace is the private residence of Punjab Chief Minister Capt. Amarinder Singh and the name of the CM's only son is Raninder Singh.
>
> In this letter, J.E.C. Grange, Chief Operating Officer of SMX, informed Leonard Freeke of Esquare Limited, Channel Islands, that SMX received US $ 100,000 – in reference to PIC – from ABT Tech, Singapore, into the

account of Mauritius-based SMX Global Technologies Services Ltd at the Credit Suisse, Montreus (Switzerland) on August 8, 2003 as per invoice number 0803-003. The money, as per the letter, was received by SMX on behalf of Ranainder Singh.

Grange's letter further said: “We have issued a payment to you as per instructions to Esquare Communications Ltd. 29 J. Kepler St.Mellieha, Malta, as per invoice number “200318” today. We await the balance remittance of US $900,000 as per our agreement at the earliest.” Banking records also indicate that a sum of US $50,000 was transferred to Esquare that very day in Malta.

When contacted, the Chief Minister's son, Raninder Singh, admitted to Freeke being his friend but strongly denied any connection with the money transfers. He said, “Freeke may be trying to involve me in such transactions, just because he knows my father is the CM of Punjab. But I am not involved in any money transfer business and have no personal agenda.” (see box)

Freeke, however, did not respond to questionnaires twice send to him on e-mail on Tuesday and Wednesday by HT investigations reveal that Esquare Communications Limited in Mellieha (Malta) raised an invoice for US $100,000 to SMX Global once again for consultancy services for collaboration on PIC Project” on August 14, 2003. Three other invoices with HT show that a sum of US $100,000 was again raised on September 1, US$50,000 on September 14 and US $100,000 on October 1, 2003 in the name of Esquare Ltd. located in Channel Islands.

What is strange is how and why the money transactions were taking place for a company which is not yet established – and may never be.

It all started with Punjab Technical University Vice-Chancellor Y.S. Rajan and Managing Director of Punjab

Infotech N.S. Kalsi visited Amsterdam (Netherlands), among other foreign countries, to explore the possibility of setting up of the proposed PIC project in Punjab to provide optical fibre backbone, and also to explore foreign investment in the State.

In Amsterdam, both the officers met Freeke and had a discussion on the issue. Kalsi, when contacted, said that Freeke had earlier met Rajan in New Delhi on the project and later Rajan and he had met Freeke in Amsterdam.

Subsequently, Esquare communications Ltd. B.V. prepared the preliminary business plan in collaboration with SMX Global Technologies Services Ltd. Mauritius, on the instructions of Rajan. Early this year Freeke made a presentation in Chandigarh and explored the possibility of the setting up of Punjab Intranet Company (PIC).

The proposed PIC, as envisioned by the report prepared by Esquare Communications B.V., had a legal framework consisting of Punjab government, Esquare Communications and financiers. According to the business plan, "Esquare management will overview the realisation of PIC, which aims to achieve a payback period of less than three years of the investment."

A strong political association in the proposed project in the beginning itself is clearly visible because the business plan prepared by Esquare said that "leading members of the Punjab political and business community will be approached for the PIC's supervisory board".

Interestingly, one of the communications exchanged between officials of SMX and Esquare in September 2003, says, "The Internet Exchange in Punjab is just a project in a full ICT stimulation programme. We are now negotiating with the government on our role in this bigger context: the Programme. Since i have to decide with Leonard on the company that will be used in the partnership, I for now use

HOLDING as referring to that company name in the MoU."

An intensive website search revealed that apart from Esquare Communications B.V. in Amsterdam which was already existing, on September 1, 2003, the following three companies were registered in Channel Islands, namely, Esquare Communications Limited, Esquare HOLDING Ltd and Esquare International Ltd. vide registration number 12,425, 12,426 and 12,427, respectively. While as per the business plan of Esquare, the company was asked by the Punjab government to prepare the report in this regard, Kalsi denied that the state government had asked it do so. "We didn't pay any money for consultancy to Esquare/" he said.

When contacted, Rajan said that he and Kalsi had an extensive foreign tour, which also included discussions with personnel of Esquare Communications B.V., Amsterdam. "I don't know about any transfer of foreign money in this connection. I was only involved as regards the technical aspect and Kalsi would be in a better position to explain the latest status of the intended project."

Kalsi confirmed that efforts had been made to set up PIC and Esquare officials had visited Punjab to survey the area for the project in the initial stage. He claimed that "now, we propose to have a society comprising major telecom players in the country including Connect, Bharti, WorldTel, Puncom and Glide, to set up the facility, where the Punjab government wold merely be a facilitator."

He, however, denied knowledge of the above-mentioned financial transactions in the name of PIC project and stated, "Raninder (Amarinder's son) never discussed with me on the project and to the best of my knowledge had nothing to do with the project at any stage."

8 The aforesaid newspaper Article encloses a letter addressed

by J.E.C. Grange, the Chief Operating Officer of the Punjab Intranet Company, to Leonard A. Freeke dated 12.8.2003. The aforesaid letter, according to the petitioners, authenticates the facts alleged in the article published in the Hindustan Times, specially when read with the e-mail dated 14.5.2003 (reproduced above). The aforesaid letter dated 12.8.2003 is also being extracted hereunder:-

> "Mr Leonard Freeke
> Esquare Limited
> 47 Esplanade,
> St Holior
> Jersey JE108D
> Channel Islands
>
> 12th August 2003
>
> Dear Mr Leonard,
>
> Reference to our ongoing project, Punjab Intranet Company (PIC)
>
> We have received $100,000 in our account at the Credit Suisse, Montreux, Switzerland on the 8th August 2003 from c/o ABT Tech, Singapore as per our invoice number 0803-003, on behalf of Mr. Ranainder Singh your Consultant/Partner in the Punjab Intranet Company.
>
> We have issued a payment to you as per instructions to Esquare Communications Ltd. 29 J Kepler St. Mellieha, Malta as per invoice number "200318" today.
>
> We await the balance remittance of $900,000 as per our agreement at the earliest.
>
> Yours sincerely,
> sd/-xx
> J.E.C.Grange
> Chief Operating Officer
> CC:
> Mr. Ranainder Singh, New Moti Bagh Palace, Punjab,India.

9 The article, which had appeared in the Hindustan Times on 27.12.2003, also enclosed a `box' extracting the comments/statement made by Raninder Singh in connection with the contents of the article.

The contents of the box are being extracted hereunder:

> "I KNOW FREEKE SINCE COLLEGE
> BUT NOTHING ABOUT PUNJAB
> INTRANET COMPANY: RANINDER
>
> RANINDER SINGH, when contacted admitted that he had known Leonard Freeke for the past several years. "We studied together in a college in the University of Buckingham, England. My wife even attended Freeke's wedding recently." he added. Asked whether he had any business partnership/association with Freeke, the CM's son said, "I have no business interest with anyone abroad, except that I look after my father's business in India."
>
> On transactions between SMX and Esquare, he said he had no idea about it. "I don't know about SMX or ABT Tech. I am not involved in any such transactions." When informed that a copy of letter sent by SMX Global to Freeke had been marked to him at the New Moti Bagh Palace, Raninder Singh said, "Freeke keeps sending me letters and mails, but I have nothing to do with PIC or any such project.
>
> HTC,. Chandigarh."

10 It is alleged on behalf of the petitioners, that the aforesaid article, which had appeared in the Hindustan Times on 28.12.2003, created a political storm in the State of Punjab, whereupon demands were raised that investigations be initiated into the allegations levelled in the article and the guilty be punished. It is also alleged on behalf of the petitioners, that with the avowed purpose of preventing any meaningful investigation, Captain Amarinder Singh, the Chief Minister, through a notification dated 2.1.2004, manoeuvred the appointment of a Commission of Inquiry, under the Commission of Inquiries Act, 1952, headed by Mr. Justice B.S.Nehra, a retired Judge of this Court, to enquire into the "truthfulness or otherwise", of the facts alleged in the

article, which had appeared in the Hindustan Times, published on 28.12.2003. Under the mandate of the notification, the report was to be submitted by the Commission within two months of its constitution.

11 Consequent upon the appointment of the aforestated Commission of Inquiry, deliberations were held by it, resulting into a report dated 17.12.2004. The aforestated notification, setting up the Commission of Inquiry, dated 2.1.2004, and its report dated 17.12.2004, are subject matter of challenge at the hands of the petitioners through the instant writ petition. The challenge to the notification dated 2.1.2004, as well as, the report dated 17.12.2004 was primarily on technical grounds. It is, therefore, that detailed reference was not made to the aforesaid report during the course of hearing of this case. Limited references were made to the report, to the extent they were relevant to the issues canvassed. We, however, consider it just and appropriate to narrate, for a complete and effective adjudication of the controversy raised in this case a bird's eye view of the deliberations, the evidence recorded and the conclusions drawn by the Commission. The same are recorded in the succeeding paragraphs.

12 The Commission commenced its deliberations by publishing notices, inviting persons and organisations acquainted with the facts and circumstances pertaining to the subject matter of enquiry, to make a statement of facts in support of the matter under investigation, as also in respect of matters incidental or ancillary thereto, and provide all other evidence available with them of the facts asserted in their statements. The aforestated notices appeared in different newspapers on 22.1.2004 and 23.1.2004. Despite publication in a number of newspapers, no person

belonging to the general public, politicians or journalists, came forward to provide any material during the course of enquiry, except Kanwar Sandhu, Resident Editor of the Hindustan Times and Manish Tewari, Principal Correspondent of the Hindustan Times. Consequently, the task of the Commission was limited to questioning and recording statements on behalf of the Hindustan Times i.e. the newspaper which had published the controversial news-item in its Chandigarh edition on 28.12.2003, besides government officers, referred to in the said article, and the main person targetted in the article, namely, Raninder Singh (respondent No.7), the son of the former Chief Minister Captain Amarinder Singh.

13 Kanwar Sandhu, Resident Editor of the Hindustan Times, filed an affidavit dated 16.2.2004 for the consideration of the Commission. Besides his affidavit, he also furnished documents and information to the Commission, on the basis of which he wished to authenticate the report of Manish Tewari, Principal Correspondent, Hindustan Times, published on 28.12.2003. An extract of the affidavit of Kanwar Sandhu, highlighting the important points to be taken into consideration by the Commission of Inquiry is being reproduced hereunder:-

> " Important points to note (which were crucial to the news report):-
>
> Page 1: The report was prepared on March 12, 2003.
>
> Page 3 (Para 2): The Management of Esquare was asked by the Punjab Government to prepare business plan.
>
> Page 14 (Para 3) : PIC is an independent dark fibre provider, not tied to any other network operator....
>
> Page 24 : The legal structure of the proposed PIC has Esquare Communications as one of the partners. It also says

> that leading members of the Punjab political and business community will be approached for PIC's supervisory board.
>
> When Hindustan Times news item appeared on December 28, Chief Minister Capt. Amarinder Singh stated at a press conference that neither was there any Punjab Intranet Company in existence in the State, nor was it ever planned to be set up at any point of time.
>
> However, the Business Plan on PIC prepared in March, 2003, by Esquare; various communications between Mr. Freeke and Mr. Sachin Duggal; the visit of Mr. Kalsi and Mr. Rajan to Amsterdam and their meeting with Freeke in July, 2003; the visit of Mr. Sachin Duggal and Mr. Freeke to India in August in connection with the same project; and Mr. Freeke's letter dated December 29,2003, released by the Chief Minister in a press conference, that he had been waiting to hear something on the PIC project for the past four months; clearly belies the Punjab Government's claim that the PIC was neither discussed nor envisaged at any point in the past."

It would be pertinent to mention that Kanwar Sandhu, Resident Editor of the Hindustan Times, was also required by the Commission, through letters dated 10.3.2004 and 25.3.2004, to submit documents in conformity with the Regulations of Procedure Order 2004, of the Justice Nehra Commission of Inquiry. On the receipt of the aforesaid letters, Kanwar Sandhu, furnished the following reply, vide his letter dated 30.3.2004:-

> " Please refer to your letter of March 10 and March 25, 2004 regarding submission of documents in conformity with the regulations of procedure 2004 of Justice Nehra Commission of Inquiry.
>
> I would like to state that since the inquiry related to a news item which appeared in Hindustan Times, we thought it

> our duty to pass on to the Commission certain documents which helped form the basis of the newsitem. However, since instead of using these documents which are self-explanatory, you are insisting on regulations and procedures, we are not keen to submit anything in this connection. You would appreciate that a professional journalist cannot disclose the source of information, as required by the Regulations of Procedure of the Commission that you have quoted."

It is apparent that Kanwar Sandhu, despite having submitted to the jurisdiction of the Commission of Inquiry, did not comply with the Commission's letters dated 10.3.2004 and 25.3.2004.

14 Nirmaljit Singh Kalsi, Managing Director of Punjab Information and Communication Technology Corporation Limited, (referred to as N.S. Kalsi in the newspaper report) submitted an affidavit dated 31.3.2004 to the Commission. During the course of his questioning before the Commission he, inter alia, stated as under:-

> "Question No.6: Whether Shri Raninder Singh had ever called you or enquired from you or given any orders to do anything in the matter of Esquare Communication at the time of your visit till today?
>
> Answer No.6: Shri Raninder Singh has never contacted me in this regard.
>
> Question No.7: Whether at any time, anybody in the Government, despite your declining certain proposals for M/s Esquare Communications, has ordered you to pressurized you or suggested you to give any kind of monetary benefits to Esquare Communications?
>
> Answer No.7: No. Rather Chief Minister, who is also the

Minister-in-charge of the Department of Information Technology and Department of Industries and Commerce, concurred with my report for declining the proposal.

Question No.8: Shri Kalsi has brought the original record of the entire matter which was perused by the Commission and Xerox copies of the relevant portion retained by the Commission for further proceedings. Mr. Kalsi may kindly see the record and tell the Commission whether any communications or any suggestions were made by the Government to Esquare Communications to the effect that certain amount of money would be paid to them for any work done by them on behalf of the Government?

Answer No.8: No. No money was ever paid or promised by the Government to be paid to M/s Esquare Communications for any work as per the record available with the Corporation. As is also clear from para 13c of my affidavit, the Punjab Government as to act only as a facilitator for setting up of an Internet Exchange on the request of Internet Services Providers without having any financial stake of the Government in the project. This is also duly recorded in the minutes annexed at `F'. It may also be mentioned that till date no Memorandum of Understanding or any agreement has been signed with M/s Esquare Communications BV by the Department of Information, Technology, Government of Punjab or Punjab Infotech or any of its subsidiaries."

The aforestated responses, in sum and substance, summarize the deposition of N.S. Kalsi before the Commission of Inquiry.

15 Y.S. Rajan, Technical Adviser to the then Chief Minister, Punjab, as also, former Vice Chancellor, Punjab Technical University, Jalandhar, filed an affidavit dated 22.7.2004 and also recorded his statement before the Commission. Relevant extract of his statement, which constitutes the stance adopted by him, is being reproduced hereunder:-

"Question No.1: When were you associated with the work of evaluating proposal made by M/s Esquare Communication?

Answer Somewhere in February-March 2003, an oral presentation was made by Mr. Leonard Freeke & I was asked to see the presentation by the Government. Later I was to receive inputs from him in order that Punjab specific proposal can emerge. As such, a proposal was under the process of evolution and for full evaluation of the proposal I had advised that it may be studied by Department of IT and visit with the Secretary-IT may be done by a team. The real serious presentation and evaluation started only when we visited Amsterdam.

Question No.2: Did anybody in the Government pressurize you that this project is to be definitely implemented?

Answer Not at all. My role has been primarily that of being a sounding board for ideas for several aspects of development of Punjab especially with the help of scientific and technological inputs. There were many proposals and ideas which had been referred to me. This was one such. Nobody in the Government at any time during my tenure have ever told me that this proposal ought to be pushed.

Question No.3: Was at any time Government committed in these deliberations that they will be giving benefit to this Company on monetary terms?

Answer No. The entire idea of evolution and development of proposal itself was under the discussion stage and even during our visit it still had to undergo several changes based on the ideas which have been exchanged and in view of many ground realities presented by Secretary Information Technology. Again there were many changes in approach when they visited Punjab with many potential users. As such the question of commitment for the proposal did nor arise at all."

The answers of Y.S. Rajan reproduced above summarises the sum and substance of his statement before the Commission.

16 J.E.C. Grenge, Chief Operating Officer, SMX Global Technology Service Limited, was also summoned by the Commission to appear as a witness before it. He, however, could not be served and, therefore, did not appear as a witness before the Commission.

17 Leonard A. Freeke was summoned by the Commission through notices dated 5.4.2004 and 20.4.2004. He was offered economy class fare for coming and going back to the Netherlands. Leonard A. Freeke responded to the second of the aforesaid notices, by agreeing to appear before the Commission, subject to the condition that he was granted immunity for himself and his counsel from the Indian Government, during the period of his stay in India, besides two full time military/or police security officers to protect him and his counsel during the full length of their stay in India. In addition to this, Leonard A. Freeke

also sought payment of all expenses for appearing before the Commission for himself, as well as, for his counsel which he quantified as Euros 9,979,42. Finding those terms unreasonable and, for certain other reasons as are apparent from the report of the Commission, his testimony was dispensed with by the Commission. The reasons recorded by the Commission, in dispensing with his testimony, are being reproduced hereunder:-

> " It will be pertinent to mention here that Mr. Leonard A. Freeke was issued summons to appear before the Commission on 20.5.2004 making it clear that he will be entitled to economy class fare for his to and fro journey and other expenses admissible under the rules. In response to this notice, he imposed on the Commission certain pre conditions for his appearance. These conditions included pre payment of EURO 9,979.42 as the expenses of his journey and that of his counsel by executive class by 3rd May, 2004, providing two full time military or New Delhi Police security officers that accompany and protect them 24 hours per day during the full length of their stay in India and full legal assurance of immunity for him and his legal counsel from the Indian Central Government during the period 16-22 May, 2004, granting unobstructed entrance into and departure from India. The Commission found these conditions unacceptable and informed him of the same. Mr. Leonard A. Freeke also retracted from his earlier evidence by way of affidavit dated 17.2.2004 and letter dated 18.2.2004 handed over to the counsel of Mr. Raninder Singh, stating that he had loaned affidavits and if the same were not returned he would report these affidavits to have been stolen. Nevertheless, he never denied the contents of the letter and affidavit. These abrupt changes in the conduct of Mr. Leonard A. Freeke makes the Commission to conclude that his behaviour was not

> consistent and that his bonafides were doubtful. As a result, his appearance was not considered necessary.
>
> Mr. Raninder Singh by tendering a report of the documents expert has established that the signatures on the letter dated 18.2.2004 written by Leonard A. Freeke to his counsel were in the same hand which had fixed signatures on affidavit dated 17.2.2004 which was duly notarized and embossed by the Indian High Commissioner in Hague. As such, the affidavit dated 17.2.2004 and letter dated 18.2.2004 both bear the genuine signatures of Mr. Leonard A. Freeke. The Commission on careful scrutiny, examination and comparison of the signature of Mr. Leonard Freeke on the letter received by the Commission with his signatures on the affidavits tendered by Shri Raninder Singh comes to the conclusion that affidavits bear the genuine signatures of Mr. Leonard Freeke."

18 Raninder Singh (respondent No.7) was afforded an opportunity to adduce evidence in his defence. Raninder Singh recorded his response through an affidavit dated 15.3.2004. In his aforesaid affidavit, he clearly asserted that the letter dated 12.8.2003, on the basis of which allegations were levelled against him was a "...computer generated photo copy...". It would be pertinent to mention that the letter dated 12.8.2003 was addressed by the Mauritius based SMX Global Technologies Service Limited to Esquare Limited Channel Islands, confirming that SMX had received money "... on behalf of Mr. Raninder Singh, your consultant/partner in the Punjab Intranet Company...". A copy of the aforesaid letter was allegedly marked to Raninder Singh at New Moti Bagh Palace, Patiala (Punjab). Respondent No.7, Raninder Singh, in his affidavit, also asserted that ABT Tech Singapore, Esquare and the Punjab Intranet were not in existence on the date of issue of the

letter dated 12.8.2003. The affidavit concludes with the note that Raninder Singh was being victimized for political reasons, being the son of the then Chief Minister Captain Amarinder Singh. The statement of Raninder Singh was recorded by the Commission on 10.8.2004 wherein he inter alia stated as under:-

"Question No.3: You have been shown a letter dated 12.8.2003, which shows that you were beneficiary of $100,000 lying in account of Suisse Montreux, Switzerland C/o ABT Tech. Singapore and balance remittance of $900,000 is awaited. Did you receive any such amount?

Answer I vehemently deny having received anything. However, I state that this letter, which is totally fabricated, specially in light of the documents tendered by me before this Commission. Firstly the company Esquare Communications Ltd. to whom this letter is alleged to have been addressed was not in any existence on 12.8.2003. this company was only incorporated on 19.9.2003. This fact is supported by a certificate from Registrar of Companies, Jersey, which is Ex.A1. Further on in this letter it is stated that the SMX received $100,000 from C/o ABT Tech.Singapore. This company ABT Tech. Singapore does not exist as a company or firm in Singapore. This fact is supported by Ex.A6 and Ex.A7. The said certificate from N.Rajan Associates, CPA Singapore are duly notarized and embossed by Indian High Commission. Further, on in this letter it is stated that some payments were made on instructions of Esquare Communications Ltd, 29 J. Kepler St.,Melleieha, Malta. In this respect I state that no such

company exists ion Malta. This fact is supported by a certificate Malta from Financial Services Authority, which is Ex.A5 which is fully notarized and embossed by the Indian High Commission. Mr. Leonard A. Freeke has also given an affidavit duly notarized and endorsed by the Indian High Commission and is Ex.A4 in support of his reply to my counsel Ex. A3, wherein he has categorically denied that he never received a letter in question and that I don't have any connection whatsoever with him as a consultant, partner or equity holder in any of his companies nor he had paid any amount or consultancy charges/fee or dividend to me. As such keeping in view of these documents I state that this letter is a fabricated document to malign me and my father.

Question No.4 You have been shown invoices bearing No. 200303 dated 1.0.2003, 200302 dated 14.9.2003, 200301 dated 1.9.2003 & 200319 dated 14.8.2003. It is alleged by Hindustan Times that these invoices were raised to your benefit.

Answer It is incorrect that these invoices are raised to my benefit. However it may be stated that these companies did not exist on the dates on which these invoices were raised. Moreover these invoices were not signed by anybody. Therefore I say that these invoices are again forged documents to malign me and my father. Moreover, they have no reference to my name. The company Esquare Communications Ltd., 29 J. Kepler St., Melleha,Malta was never incorporated as I have already stated above."

On being questioned before the Commission in respect of the letter dated

12.8.2003, Raninder Singh's stand was as under:-

> "Question: Have you ever send any e-mails 14.5.2004 to Mr. Leonard A. Freeke regarding your involvement with him regarding the project known as "Punjab Intranet."
>
> Answer: I have not sent any e-mails to Mr. Leonard A. Freeke, if Mr. Leonard A. Freeke alleges that I have sent e-mails to him it is totally wrong and denied. He might have hacked into my system and created e-mails as he is an computer expert. My computer network is very simple and any persons can have access to my e-mail address, can get my password & create and send any e-mail. If there were any emails or connection with him the same would have been mentioned in the Affidavit of Mr. Leonard A. Freeke dated 17th February, 2004, hence all these emails are fabricated."

The extracts from the affidavit of Raninder Singh (respondent No.7) dated 15.3.2004 and his statement dated 10.8.2004 reproduced hereinabove summarise the effect of his deposition before the Commission.

19 Having recorded, inter alia, the statements of the aforesaid persons and having taken into consideration subsequent newspaper reports, including the one which appeared in the Hindustan Times dated 16.10.2004 under the title "Scam Interrupted", the Commission recorded its conclusions and recommendations in its report dated 17.12.2004, as under:-

> " In the light of the above discussion, the Commission holds that there is no truth in the allegations contained in the news item titled "Curious transaction in name of Punjab Intranet" published in the Chandigarh edition of the Hindustan Times dated 28.12.2003. While taking note of the subsequent publication of the news item dated 15.10.2004 in

the Hindustan Times the Commission holds that the news item is totally defamatory and is based on false and fabricated documents.

Issue No.1 stands decided accordingly.

In view of the findings of the Commission on Issue No.1, the Commission comes to the further conclusion that documents, material and copies of documents produced by Mr. Kanwar Sandhu, Resident Editor of the Hindustan Times, Chandigarh, are not genuine documents and those are the result of fabrication.

Issue No.2 is decided accordingly.

In view of the above findings, the Commission would like to recommend that in public interest, a criminal case be registered against those responsible for fabricating the documents that were used in the defamatory news item published in the Hindustan Times on 28th of December, 2003 and 16th of October, 2004 and also against those responsible for using these false and fabricated documents as genuine."

20 On 20.2.2004, all the petitioners, along with other members of Parliament, belonging to the Shiromani Akali Dal, as well as, to the Bhartiya Janta Party, raised the issues emerging from the aforesaid newspaper report of the Hindustan Times, dated 27.12.2003, in both the Houses of Parliament.

21 On 28.11.2004, as the then Leader of the Opposition, Mr. Parkash Singh Badal, the present Chief Minister of Punjab, and the father of Sukhbir Singh Badal (petitioner No.2) allegedly met the Governor of Punjab and submitted a memorandum to him, requesting him to have the allegations contained in the newspaper report dated 28.12.2003 investigated, by an impartial agency, wherein he highlighted the fact that delay in such investigations, would not be in public interest.

22 A memorandum dated 18.10.2004 was also allegedly submitted by the petitioners to the Prime Minister of India requesting that these matters be got investigated through independent agencies of the Government like the Directorate of Enforcement and the Directorate of Revenue Intelligence.

23 The petitioners also sought judicial redress repeatedly on the issue in hand. In the first instance, they approached the Delhi High Court by filing W.P.(Crl.) No.105 of 2005 titled as Sukhdev Singh Dhindsa and others V. Union of India and others, for seeking reliefs similar to the ones sought through the instant writ petition i.e. for the issuance of a direction, specially in the nature of mandamus, directing respondent No.1, to get the facts mentioned in the petition investigated through an independent agency, in particular by the Directorate of Enforcement and the Directorate of Revenue Intelligence/CBI. However, the same was dismissed as withdrawn on 2.2.2005, with liberty to approach the appropriate Court. Thereafter, the petitioners filed CWP No.5066 of 2005 titled as Sukhdev Singh and others V. Union of India, in this Court, which was dismissed as premature on 5.8.2005. The petitioners having unsuccessfully assailed the action of the constitution of the Commission of Inquiry through notification dated 2.1.2004, as well as, the conclusions drawn by it, on the floor of the Punjab Legislative Assembly on 13.10.2005, have again approached this Court by filing the instant writ petition, this time with a prayer for an independent investigation through the Central Bureau of Investigation.

24 It is on the factual matrix recorded in the foregoing paragraphs, that the petitioners have canvassed their claim. We consider it

just and appropriate to summarise the various issues canvassed on behalf of the petitioners, before embarking on the task of dealing with them individually. The issues canvassed on behalf of the petitioners are, accordingly, summarised hereunder:-

The first contention of the learned counsel for the petitioners was, that the subject matter of the factual position, emerging out of the newspaper report dated 28.12.2003, is referable to items contained in List-I of the Seventh Schedule of the Constitution of India. For the aforesaid reason, it was submitted, that the State Government had no jurisdiction or authority to set up the Commission of Inquiry.

The second contention of the learned counsel for the petitioners was, that a Commission of Inquiry under the provisions of the Commission of Inquiry Act, 1952 could have only been set up for a “public purpose', whereas, the instant Commission was set up for a “private purpose”, and as such, its findings should beset aside.

The third contention of the learned counsel for the petitioner is, that the notification dated 2.1.2004, by which Mr.Justice B.S. Nehra was appointed as a Commission of Inquiry, set out a “definite matter” for the determination of the Commission, namely, “truthfulness or otherwise of the allegations contained in the newspaper item published in the Chandigarh edition of Hindustan Times dated 28.12.2003”. As such, the Commission could only have conducted an enquiry into facts, which had arisen prior to the publication of the aforesaid newspaper item dated 28.12.2003, and could not have made a reference to any matter which had arisen thereafter, including the subsequent investigative report which had appeared in the Hindustan Times on 16.10.2004 under the title “Scam

Interrupted". Since references had been made by the Commission even to subsequent newspaper reports, it was submitted that the Commission had transgressed its defined parameters, and as such, its findings deserved to be set aside.

Fourthly, it is averred that the conditions imposed by Leonard A. Freeke (to appear before the Commission), were not acceptable to the Commission, and as such, the Commission on 30.4.2004 informed Leonard A. Freeke, that it had decided to dispense with his deposition. It is, however, averred in the pleadings of this case, that Leonard A. Freeke, at a later juncture, agreed to appear before the Commission at his own expense, and without any preconditions and despite the aforesaid, he was not allowed to do so. According to the learned counsel for the petitioners, the non-examination of Leonard A. Freeke even after he had agreed to appear before the Commission unconditionally, totally vitiates the findings recorded by the Commission.

The fifth contention of the learned counsel for the petitioners, and the one most emphatically pressed, was that the Commission of Inquiry set up by the Notification dated 2.1.2004 did not have adequate means to deal with the investigation/probe required to be made. And that, only the Central Bureau of Investigation has the appropriate means to deal with the instant investigation. It is, therefore, submitted that the findings of the Commission of Inquiry be set aside, and a direction be issued to the Central Bureau of Investigation to conduct a probe into the matter and to submit its report.

25 The first contention of the learned counsel for the petitioners is, that the Commission of Inquiry set up by the State Government

through the notification dated 2.1.2004 was beyond the competence and the jurisdiction of the State Government. In order to substantiate his aforesaid contention, learned counsel for the petitioners placed reliance on the provisions of the Commissions of Inquiry Act, 1952. Pointed reference was made to section 3 of the aforestated Act, which is being reproduced hereunder:-

> "3. Appointment of Commission.- (1) The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by each House of Parliament or, as the case may be, the Legislature of the State, by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification, and the Commission so appointed shall make the Inquiry and perform the functions accordingly:
>
> Provided that where any such Commission has been appointed to inquire into any matter-
>
> (a) by the Central Government, no State Government shall, except with the approval of the Central Government, appoint another Commission to inquire into the same matter for so long as the Commission appointed by the Central Government is functioning;
>
> (b) by a State Government, the Central Government shall not appoint another Commission to inquire into the same matter for so long as the Commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States.
>
> (2)The Commission may consist of one or more members appointed by the appropriate Government, and where the Commission consists of more than one member, one of

them may be appointed as the Chairman thereof.

(3)The appropriate Government may, at any stage of an inquiry by the Commission fill any vacancy which may have arisen in the office of a member of the Commission (whether consisting of one or more than one member).

(4)The appropriate Government shall cause to be laid before each House of Parliament or, as the case may be, the Legislature of the State, the report if any, of the Commission on the inquiry made by the Commission under sub-section (1) together with a memorandum of the action taken thereon, within a period of six months of the submission of the report by the Commission to the appropriate Government."

In order to effectively understand the implications of section 3, learned counsel for the petitioners has also invited the Court's attention to the definition of the term "appropriate Government" for the purposes of section 3 (extracted hereinabove) by relying on section 2(a) of the Commissions of Inquiry Act, 1952. Relevant extract of the aforesaid provision is also being reproduced hereunder:-

"(a) "appropriate Government" means-

(i)the Central Government, in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List I or List II or List III in the Seventh Schedule to the Constitution of India; and

(ii)The State Government, in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List II or List III in the Seventh Schedule to the Constitution:"

On a conjoint reading of sections 3 and 2(a) of the Commissions of Inquiry Act, 1952, it is the contention of the learned counsel for the

petitioners, that a Commission of Inquiry can be appointed by a State Government only in respect of matters relatable to entries under Lists II and III of the Seventh Schedule of the Constitution of India. In this behalf, it is asserted by the learned counsel for the petitioners, that the subject matter of the newspaper article dated 27.12.2003, the truth or otherwise whereof was to be determined by the Commission of Inquiry set up by the State Government, primarily relates to "hawala" transactions i.e. transfer of money from within the territory of India, to foreign countries, unauthorisedly i.e. without recourse to legal channels for such transfer. According to learned counsel, the subject matter of the article falls exclusively under entries enumerated in List I of the Seventh Schedule of the Constitution of India.

26 As against the aforesaid contention advanced on behalf of the petitioners, it is submitted on behalf of the respondents, that the subject matter of the newspaper report, which was published in the newspaper on 27.12.2003, was not of "hawala" transactions, but issues relatable to contract, industry, corruption, conspiracy etc. which were all within the scope of the jurisdiction vested in the State Government under entries enumerated under Lists II and III of the Seventh Schedule of the Constitution of India.

27 In order to resolve the controversy noticed in the foregoing two paragraphs, learned counsel for the petitioners, contends, that determination of the pith and substance of the allegations contained in the newspaper report dated 27.12.2003, would lead to the eventual determination, whether the constitution of the Commission of Inquiry through the notification dated 2.1.2004 was on a subject matter within the

competence of the State Government or not. In this behalf, learned counsel for the petitioners, inter alia, placed reliance on the decision rendered by the Apex Court in Union of India V. Shah Goverdhan L. Kabra Teachers' College, (2002) 8 SCC 228. This Court's attention was invited to the following observations recorded therein:-

> " It is further a well-settled principle that entries in the different lists should be read together without giving a narrow meaning to any of them. Power of Parliament as well as the State Legislature are expressed in precise and definite terms. While an entry is to be given its widest meaning but it cannot be so interpreted as to override another entry or make another entry meaningless and in case of an apparent conflict between different entries, it is the duty of the court to reconcile them. When it appears to the court that there is apparent overlapping between the two entries the doctrine of "pith and substance"has to be applied to find out the true nature of a legislation and the entry within which it would fall. In case of conflict between the entries in List I and List II, the same has to be decided by application of the principle of "pith and substance". The doctrine of "pith and substance" means that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it, it cannot be held to be invalid, merely because it incidentally encroaches on matters assigned to another legislature. When a law is impugned as being ultra vires of the legislative competence, what si required to be ascertained is the true character of the legislation. If on such an examination it is found that the legislation is in substance one on a matter assigned to the legislature then it must be held to be valid in its entirety even though it might incidentally trench on matters which are beyond its competence. In order to examine the true character of the enactment, the entire Act, its object, scope

> and effect, is required to be gone into. The question of invasion into the territory of another legislation is to be determined not by degree but by substance. The doctrine of "pith and substance" has to be applied not only in cases of conflict between the powers of two legislatures but in any case where the question arises whether a legislation is covered by particular legislative power in exercise of which it is purported to be made."

Reference was also made to the decision rendered by the Supreme Court in Ishwari Khetan Sugar Mills (P) Limited and others V. State of Uttar Pradesh and others (1980) 4 SCC 136, wherefrom reference was made to the following observations:-

> " When validity of a legislation is challenged on the ground of want of legislative competence and it becomes necessary to ascertain to which entry in the three lists the legislation is referable to, the court has evolved the theory of pith and substance. If in pith and substance a legislation falls within one entry or the other but some portion of the subject matter of the legislation incidentally trenches upon and might enter a field under another list, the Act as a whole would be valid notwithstanding such incidental trenching."

Our attention was also invited to the judgment rendered by the Apex Court in Mangalore Ganesh Beedi Works and others V. Union of India and others (1974) 4 SCC 43, wherefrom reliance was placed on the following conclusions recorded therein:-

> "26. The scheme of the Act relates to provisions regarding health and welfare, conditions of employment, leave with wages, extension of benefits by applying other Acts to labour. To illustrate Section 28 of the Act extends benefits of the Payment of Wages Act to industrial premises, Section 31 of the Act provides for security of service, Section 37 of

the Act extends the benefit of Industrial Standing Orders Act, 1946. Again, Section 37(3) of the Act makes provisions of the Maternity Benefits Act applicable to every establishment. Section 38(1) of the Act applies to safety provisions contained in Chapter IV of the Factories Act to industrial premises. Section 39(1) of the Act makes the Industrial Disputes Act, 1947 applicable to matters arising in respect of every industrial premises. Section 39(2) of the Act provides that disputes between an employee and an employer in relation to issue of raw material, rejection of beedis and cigars, payment of wages for the beedis and cigars rejected by the employer, shall be settled by such authority as the State Government may specify. An appeal is provided to the appellate authority whose decision is final. Section 39(1) of the Act applies to industrial premises. Section 29(2) of the Act applies to every establishment.

27. The Act speaks of licensing of industrial premises. The benefits under the Act are extended to both industrial premises and establishments. Establishments mean also places where home-workers work.

28. The pith and substance of this Act is regulation of conditions of employment in the beedi and cigar industry. The Act deals with particular subject matter as regards the establishments and industrial premises. These matters are regulation of conditions of employment in the industry and the industrial relations between the employer and the employee. Entries 22 to 24 in List III are wide enough to cover this piece of labour welfare measure. Entry 22 deals with labour welfare. Entry 23 deals with social security, employment and unemployment. Entry 24 deals with welfare of labour including conditions of work, provident funds, employer's liability, workmen's compensation, invalidity and old age pensions and maternity benefits. The Act is valid and falls within Entries 22, 23 and 24 of List III."

Last of all, reliance was placed on the decision rendered by the Apex Court in Kannan Devan Hills Produce Co. Ltd. V. State of Kerala and another (1972) 2 SCC 218 and the following observations made therein:-

> "28. It seems to us clear that the State has legislative competence to legislate on Entry 18, List II and Entry 42, List III. This power cannot be denied on the ground that it has some effect on an industry controlled under Entry 52, List I. Effect is not the same thing as subject matter. If a State Act, otherwise valid, has effect on a matter in List I it does not cease to be a legislation with respect to an entry in List II or List III. The object of sections 4 and 5 seems to be to enable the State to acquire all the lands which do not fall within the categories (a), (b) and © of Section 4(1). These provisions are really incidental to the exercise of the power of acquisition. The State cannot be denied a power to ascertain what land should be acquired by it in the public interest."

28 On the basis of the judgments referred to above, learned counsel for the petitioners vehemently contends, that the doctrine of pith and substance should be adopted to determine the nature of the allegations contained in the newspaper report dated 27.12.2003. According to the learned counsel for the petitioners, on such a determination it would be evident that the allegations contained in the article which appeared in the Hindustan Times on 28.12.2003, fall within the entries contained in List I of the Seventh Schedule and, as such, leading to the inevitable conclusion that the State Government did not have the jurisdiction or the authority to constitute the Commission of Inquiry, as ordered by it through the notification dated 2.1.2004. In fact, it is the vehement contention of the learned counsel for the petitioners,

that the subject matter of the aforestated newspaper report falls within the purview of Entries 36, 38, 45, 93 and 94 of the Union List, and therefore, the State Government was not competent to appoint the Commission for the purpose under reference.

29 According to the learned counsel for the petitioners, in case of a conclusion at the hands of this Court, that the subject matter of the newspaper report dated 27.12.2003 falls partially under the purview of entries contained in the Union List and partially under entries contained in the State List and the Concurrent List of the Seventh Schedule of the Constitution of India, it will be necessary for this Court to determine the dominant nature of the facts reflected in the newspaper item. In case the dominant nature of the facts fall within the purview of the entries contained in List I, again, for the same reasons, as have been referred to in the foregoing paragraph, the State Government would have no jurisdiction to appoint a Commission of Inquiry, even though some aspects of the subject matter of the newspaper report may also be relatable to entries contained in Lists II and III of the Seventh Schedule. In this behalf, learned counsel for the petitioners has again placed reliance on a number of judgments of the Apex Court. Reference in this behalf may first be made to the decision rendered by the Supreme Court in Prag Ice and Oil Mills V. Union of India (1978) 3 SCC 459, wherein the following observations were recorded by the Apex Court:-

> "60. Section 3(1) of the Essential Commodities Act, 1955, empowers the Central Government to fix the prices of essential commodities if it is of the opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their

> equitable distribution and availability at a fair price. Sub-section (2)(c) of Section 3 provides that without prejudice to the generality of the power conferred by sub-section (1), an order made under that sub-section may provide for controlling the price at which any essential commodity may be bought or sold. The dominant purpose of these provisions is to ensure the availability of essential commodities to the consumers at a fair price. And though patent injustice to the producer is not to be encouraged, a reasonable return on investment or a reasonable rate of profit is not the sine qua non of the validity of action taken in furtherance of the powers conferred by Section 3(1) and Section 3(2)(c) of the Essential Commodities Act. The interest of the consumer has to be kept in the forefront and the prime consideration that an essential commodity ought to be made available to the common man at a fair price must rank in priority over every other consideration."

Reliance was also placed on the decision rendered by the Supreme Court in Express Newspapers Pvt. Ltd. and others V. Union of India and others (1986) 1 SCC 133, and learned counsel relied on the following determination rendered at the hands of the Apex Court:-

> "For purposes of the prevent controversy, the functionary who took action and presumably on whose instructions the impugned notices were issued was no one other than the Lt. Governor of Delhi, who, according to the learned counsel for the respondent 1, could not usurp the powers and functions of the Union of India in relation to the property of the Union and therefore had no functions in relation to the lease in question. It seems that the Minister for Works & Housing was taking his orders from respondent 2. The dominant purpose which actuated respondent 2 in initiating governmental action was not so much for implementation of the provisions of the Master Plan or the Zonal Development

> Plan framed under the Delhi Development Act or the observance of the relevant Municipal Bye-laws under the Delhi Municipal Corporation Act, but to use these provisions for an `alien' purpose and in bad faith i.e. for demolition of the Express Buildings with a mark of retribution or political vendetta for the role of the Indian Express during the period of Emergency and thereafter and thereby to bring about closure of the Indian Express. If the act was in excess of the power granted to the Ltd. Governor or was an abuse or misuse of power, the matter is capable of interference by the Court."

Learned counsel for the petitioners then invited our attention to the decision rendered in M.I. Builders Pvt. Ltd. V. Radhey Shyam Sahu and others (1999) 6 SCC, 464 wherein the Apex Court observed as under:-

> "69. The facts and circumstances when examined point to only one conclusion that the purpose of constructing the underground shopping complex was a mere pretext and the dominant purpose was to favour M.I. Builders to earn huge profits. In depriving the citizens of Lucknow of their amenity of an old historical park in the congested area on the specious plea of decongesting the area the Mahapalika and its officers forgot their duty towards the citizens and acted in a most brazen manner."

Next in order of reliance, learned counsel for the petitioners referred to the decision rendered Tata Iron & Steel Co. Ltd. V. Chief Inspecting Officer and others (2005) 9 SCC 605 and invited the Court's attention to the following observations recorded therein:-

> "Their Lordships have applied the principle of dominant purpose. The question is whether it is satisfied in the present case or not. In the present case the dominant purpose is to cater to the needs of the employees of the appellant

> management and its associated industries. In fact, it was established for that particular purpose only. But the services were also extended to government servants and to private patients not free of cost. Therefore, the dominant purpose for establishing the Hospital is not charitable which is exempted under the Act. The law which has been laid down by this Court in the aforesaid case is that the dominant purpose is appearing as charity then it will be admissible to the benefit of a charity and if it is incidental purpose then it will not be entitled to the benefit. In the present case, neither of the situations arises. It is established that the Hospital caters as a social measure for the employees of the appellant management and its associated industries and for the benefit of the government servants as well as private patients, on payment of fee. Therefore, it does not qualify for any cause as charitable institution so as to be exempted under Section 4 (2) of the Act read with Item 2 of Schedule I."

Last of all, reference was made to the decision rendered by the Supreme Court in Vijay Kumar Sharma and others V. State of Karnataka and others (1990) 2 SCC 562, wherein the Court held as under:-

> "Even otherwise, I am of the view that not to apply the theory of pith and substance when the repugnancy between the two statutes is to be considered under Article 254 of the Constitution, would be illogical when the same doctrine is applied while considering whether there is an encroachment by the Union or the State Legislature on a subject exclusively reserved for the other. When the legislative encroachment is under consideration the doctrine of pith and substance comes to the aid to validate a legislation which would otherwise be invalid for the very want of legislative competence. When the repugnancy between the two legislations is under consideration, what is in issue is whether the provision of the State enactment though otherwise constitutionally valid, has

> lost its validity because the Parliament has made a legislation with a conflicting provision on allegedly the same matter. If it is open to resolve the conflict between two entries in different lists, viz. the Union and the State List by examining the dominant purpose and therefore the pith and substance of the two legislations, there is no reason why the repugnancy between the provisions of the two legislations under different entries in the same list, viz. the Concurrent List should not be resolved by scrutinizing the same by the same touchstone. What is to be ascertained in each case is whether the legislations are on the same subject matter or not. In both cases the cause of conflict is the apparent identity of the subject matters. The tests for resolving it therefore cannot be different."

30 According to the learned counsel for the petitioners, the dominant object of the newspaper report dated 27.12.2003 was to depict illegal transfer of money from within India to foreign countries without recourse to prescribed modes of currency transfer. As such the dominant nature of the facts reflected in the said newspaper report, according to learned counsel must be deemed to be covered by Entries 36, 38, 45, 93 and 94 of the Union List under the Seventh Schedule of the Constitution of India, the State government under section 3 read with section 2(a) of the Commissions of Inquiry Act, 1952, had no jurisdiction to appoint the Commission of Inquiry through its notification dated 2.1.2004. On the instant issue, learned counsel for the petitioners was at pains to point out that Mr. Parkash Singh Badal, the then leader of the opposition (and presently the Chief Minister of Punjab)had raised the instant issue on the floor of the House when the report of the Commission of Inquiry was placed before the Punjab Legislative Assembly for its consideration on

13.10.2005.

31 On the issue of "hawala" transactions, namely, the allegation of illegal transfer of money from within this country to foreign countries, without the authority of law, learned counsel for the petitioners invited the Court's attention to the newspaper report dated 27.12.2003, and referred to the allegation of transfer of a sum of US dollars 1000 through an invoice dated 1.9.2003 and further invoices dated 14.9.2003 and 1.10.2003, showing that sums of US dollars 50000 and US dollars 1000 were transferred in the name of Esquare Limited located in Channel Islands. According to the learned counsel for the petitioners, since the representatives of the State Government had denied the transfer of any foreign exchange for the purpose, for which the aforesaid invoices were raised, it is apparent, that the aforesaid transactions constituted illegal transfer of money from within this country to foreign countries, and as such, constituted what is commonly described as "hawala" transactions. The pith and substance of the newspaper report, according to the learned counsel for the petitioners, therefore, squarely falls within the scope of entries contained in the Union List under the Seventh Schedule of the Constitution of India.

32 The entries from the Union List, pointedly relied upon by the learned counsel for the petitioners, are being extracted hereunder:-

> "36. Currency, coinage and legal tender; foreign exchange.
> 38. Reserve Bank of India.
> 45. Banking
> 93. Offences against laws with respect to any of the matters in this List.
> 94. Inquiries, surveys and statistics for the purpose of any

of the matters in this list

33 As against the aforesaid submissions of the learned counsel for the petitioners, after extensively referring and repeatedly reading from the newspaper report dated 27.12.2003, learned counsel for the respondents contended that the newspaper report under reference was drafted in a designedly vague and suggestive manner, imputing acts of omission and commission on the part of the Government of Punjab and its officers. It is submitted that the facts narrated in the newspaper report dated 27.12.2003 were not only an attempt to make an accusation of alleged unexplained transfer of money, it was also a calculated narrative to assign a role to the Government of Punjab and its officials in a seemingly illegal deal. Learned counsel representing respondent No.4 invited the Court's attention to repeated references to a proposed collaboration by the Government of Punjab in a "information technology" venture i.e. an association or contract in an under the table business venture. It is also submitted that the narration of facts in the said article contained insinuations of "making money when the sun shines" on the family members of Captain Amarinder Singh, the then Chief Minister of Punjab. It is, therefore, submitted that the facts which constitute the allegations contained in the newspaper report dated 27.12.2003 are not confined to entries contained in List I of the Seventh Schedule to the Constitution of India but are primarily relatable to entries in Lists II and III thereof.

34 According to the learned counsel for the respondents, the two named Punjab Government officers involved in the allegations were N.S. Kalsi, Managing Director of Punjab Information and Communication

Technology Corporation Limited, and Y.S. Rajan, Technical Adviser to the then Chief Minister, Punjab, Captain Amarinder Singh. According to the newspaper report, the preliminary business plan envisaged for the incorporation of the Punjab Intranet Company was to be prepared by a foreign collaborator. It was further submitted that Leonard A. Freeke, a recipient of money in the controversial newspaper report, under the heading "Curious transactions in the name of Punjab Intranet ---" is stated to have made a presentation on the issue at Chandigarh for exploring the possibility of setting up of the project in the name of Punjab Intranet company. Again referring to the newspaper report, under reference, learned counsel for the respondents submitted that an aspersion was cast in the report that a business plan had been prepared by Esquare Communication BV Limited, on the asking of the Punjab Government. Based on the aforesaid background, as well as, references to Raninder Singh (respondent No.7) and Captain Amarinder Singh (respondent No.6), learned counsel for the respondents vehemently contends, that without making pointed references to them, it was sought to be projected through innuendoes that senior Punjab Government officers, as well as, politicians of the State of Punjab, were involved in an illegal business venture.

35 According to the learned counsel for the respondents, it would be reading too much into the article, to assert, that any money transactions had actually been made or that, any money had been transferred from within this country to some foreign country bye-passing legal channels of money transfer. In this behalf, learned counsel for the respondents has invited the attention of this Court to the opening

paragraph of the newspaper report, which refers to the raising of invoices for different sums of money, and not that any such amount of money was actually transferred. It is, therefore, the submission of the learned counsel for the respondents, if one was to be limited to the newspaper report dated 28.12.2003 (as is the contention of the learned counsel for the petitioners while canvassing the third submission summarised in para 23(c) above), then there is absolutely no allegation of any "hawala" transaction. It is, therefore, sought to be submitted, on the basis of the contentions noticed in the preceding three paragraphs, that the allegation of illegal transfer of money in the newspaper report dated 27.12.2003 is only a figment of the imagination of the petitioners, and nothing beyond that.

36 According to the learned counsel for the respondents, all the allegations contained in the newspaper report, under reference, are suggestive of casting aspersions and insinuations on lack of transparency, aspects such as the involvement of the son of the then Chief Minister of Punjab and also an oblique reference to the then Chief Minister Captain Amarinder Singh himself, as well as, to officers of the Government in a shady/scandalous transaction. According to the learned counsel for the respondents, all these allegations must be deemed to fall within the realm of `contract, industry, corruption, conspiracy etc'. The purview of the aforesaid issues, according to the learned counsel for the respondents, squarely falls within the authority of the State Government. In this behalf, learned counsel for the respondents has placed reliance on several entries in List II and List III contained in the Seventh Schedule of the Constitution of India, to demonstrate that the subject matter of

investigation referred to the Commission of Inquiry, consequent upon the issuance of the notification dated 2.1.2004, fell squarely within the authority of the State Government vested in it under section 3 read with section 2(a) of the Commissions of Inquiry Act, 1952. In this behalf, the stance adopted on behalf of the respondents, may be summarized as under:-

> (i) Public Order (entry I,List II) – Since the matter clearly dealt with corruption, criminal culpability as well as offence under the Indian Penal Code as stated by the Petitioners themselves.
>
> (ii)Criminal Law (entry 1, List-III) – In that the petitioners themselves are of the view that the matter involved corruption, offences against the Indian Penal Code and issues of criminal culpability.
>
> (iii)Contracts (entry 7, List-III) – In that the matter allegedly related to a contract entered into between the State of Punjab and other parties for the setting up of the project in question.
>
> (iv)Industries (entry 24, List-II) – Since the allegations pertained to a project for the setting up of an intranet part, as well as several aspects of industry.
>
> (v)Public Debt of the State (Entry 43-List II) – In that the matter dealt with certain monies, which were to be purportedly paid by the State of Punjab as consultancy fees for the alleged project."

37 Having given our thoughtful consideration to the rival contentions for the parties, it is difficult for us to accept that the pith and substance, as also, the dominant purpose of the contents of the newspaper report dated 27.12.2003 can be described as "hawala" transactions. In our view, the newspaper report highlights the possibility of favour shown to

Leonard A. Freeke, by his old time friend Raninder Singh (respondent No.7) with whom he is stated to have been associated since 1987 during the pursuit of their respective academic careers in the United Kingdom. The said favour was allegedly shown by Raninder Singh by using the good offices of his father Captain Amarinder Singh, the then Chief Minister of Punjab, as well as, senior officers of the Punjab Government. The newspaper report has insinuations of the possibility of kickbacks from the business transaction to Raninder Singh (respondent No.7). The business transactions referred to in the newspaper report relates to the setting up a joint venture company with the Punjab Government and Esquare Communications Ltd. B.V. in collaboration with SMX Global Technologies Services Limited and financiers, to be named as Punjab Intranet Company. The aforesaid company was planned to set up a national and international fibre optic cable network for establishing connectivity between business parks. All these facts disclose a business transaction through the incorporation of a company in joint venture between the Punjab Government and some foreign collaborators besides financiers. The involvement of senior bureaucrats besides the technical advisor to the Chief Minister, presumably on the command of Raninder Singh (respondent No.7) the son of the former Chief Minister of Punjab, Captain Amarinder Singh is also an insinuation emerging from the article. The involvement of Captain Amarinder Singh has a natural and implied political overtone. The connotations involved in the alleged transactions have trappings of a number of provisions of the Indian Penal Code. In view of the above, we are satisfied, that the pith and substance as well as the dominant nature of the allegations contained in the newspaper report

dated 27.12.2003 relate to matters expressed in different entries in Lists II and III of the Seventh Schedule to the Constitution of India. As such, it is not possible for us to accept the first contention of the learned counsel for the petitioners.

38 The second contention of the learned counsel for the petitioners was that under section 3 of the Commission of Inquiries Act, 1952, a Commission of Inquiry can be constituted only to determine a matter of "public interest". In this behalf, it was the contention of the learned counsel for the petitioners, that the subject matter of enquiry, for which the Commission under reference was constituted, through the notification dated 2.1.2004, did not fall within the term "public interest" but fell squarely within the term "private interest". It is asserted by the learned counsel for the petitioners, that the instant Commission of Inquiry has been constituted with the solitary object of absolving the then Chief Minister Captain Amarinder Singh (respondent No.6), as well as, his son Raninder Singh (respondent No.7) from the allegations contained in the newspaper report dated 27.12.2003. This, according to the learned counsel for the petitioners, is a gross misuse of the provisions of the Commissions of Inquiries Act, 1952. Learned counsel referred to the statement made on the floor of the House by Mr. Parkash Singh Badal (the then leader of the opposition, and presently the Chief Minister of the State of Punjab) on 13.10.2005, when the report submitted by the Commission, as well as, the action taken report, were placed before the Punjab Legislative Assembly for its consideration, wherein he had emphatically highlighted the instant issue in the following manner:-

> " When all around the news spread they told that now

> defence can only be there if a Commission is fixed and some hand picked Judge be appointed. Judges are also salable these days. Whether we may agree to it or not. Even they may be given draft judgment by you. They selected an old Judge from Patiala and made him Commission. What are the words of C.M., the same I tell to you. When they levelled allegation on the Akali Dal, at that time I had told them that if the Supreme Court may appoint Commission then Judge may also be appointed by the Supreme Court and in case High Court appoints a Commission then Judge may also be appointed by it. May any allegation is upon us or on you. Enquiry of the same be done by that Commission. At this the words of C.M. were that I do not believe in setting up Commission. They are merely eye wash, serve no purpose and are only used as delaying tactics. Deputy Speaker Sahib, if Commission is appointed for others it is a bad and in case Commission is appointed for own son then it is good. Therefore, Commission was constituted by himself. What these facts prove. In case they would have no guilty conscious then they would have themselves spoken that I myself give enquiry to CBI. Instead of this, they themselves constituted the Commission. All this was done with the thought that all this is to be washed away."

39 We have considered the aforesaid contention of the learned counsel for the petitioners. Before recording our final conclusions on the instant issue, it would be necessary to sequentially notice a few facts. The newspaper report, under reference, was published in the Hindustan Times on 27.12.2003. The notification appointing the Commission of Inquiry was issued on 2.1.2004. The Commission of Inquiry submitted its report on 17.12.2004. All the petitioners submitted a joint memorandum to the then Prime Minister of India on 18.10.2004 with the request that the

matter should be got investigated from an independent agency. On 28.11.2004, as the then leader of the opposition, Mr. Parkash Singh Badal (the present Chief Minister of Punjab) and the father of Sukhbir Singh Badal (petitioner No.2) allegedly met the Governor of Punjab and submitted a memorandum to him, requesting him to have the allegations contained in the newspaper report dated 28.12.2003 investigated by an impartial agency. On 20.2.2004, all the petitioners along with the other Members of Parliament belonging to the Shiromani Akali Dal as well as, the Bharatiya Janta Party, raised the issues, emerging out of the newspaper report dated 28.12.2003, before both Houses of Parliament. When the Commission of Inquiry was set up through the notification dated 2.1.2004, it was sought to be challenged in the first instance by the petitioners by filing Writ Petition (Crl.) No.105 of 2005 titled as Sukhdev Singh Dhindsa and others V. Union of India and others, before the Delhi High Court, for seeking similar reliefs, as have been sought in the instant writ petition, specially a direction to respondent No.1 i.e. the Union of India to get the facts mentioned in the newspaper report investigated through an independent agency and, in particular, at the hands of the Directorate of Enforcement and the Directorate of Revenue Intelligence/Central Bureau of Investigation. The aforesaid writ petition having been dismissed on 2.2.2005, the petitioners approached this Court by filing Civil Writ Petition No.5066 of 2005 titled as Sukhdev Singh Dhinda and others V. Union of India and others. The aforesaid writ petition was dismissed on 5.8.2005 as premature. The instant writ petition is a third in the series of petitions filed by the petitioners, for the same cause of action.

40 Viewed in the background of the fact that seven Members of Parliament brought the matter under reference repeatedly before the highest authorities/bodies and emphatically asserted that a probe/investigation into the matter was called for. Thereafter, they filed three different writ petitions on the same subject matter, with a prayer that the issues highlighted by the newspaper report dated 27.12.2003 should be got probed from an independent agency. Even Mr. Parkash Singh Badal, the then leader of the opposition (and the present Chief Minister of Punjab) made scathing allegations against the respondents on the floor of the Punjab Legislative Assembly on 13.10.2003. Can a matter of the nature referred to above be considered to be a matter, which is not in public interest? In our considered opinion, an issue, as the one in hand, even if it pertains to individuals, has to be described as a "matter of public importance", and despite the reference therein to a few individuals, the same cannot be treated as issues relating to "individual interests" as has been projected by the learned counsel for the petitioners. Even otherwise, a perusal of the insinuations made in the newspaper report speak of dubious activities by public men of high status and their close relations, of the involvement of the highest administrative functionaries of the State Government in acts of misuse of government funds for private gains etc. To our mind, these are matters of "public interest" and public interest alone, and as such, the appointment of a Commission of Inquiry for the said purpose cannot be held to be unsustainable for the reason canvassed. For the reasons recorded hereinabove, we find no merit in the instant contention.

41 The third contention advanced by the learned counsel for the

petitioners was that the Commission of Inquiry appointed through the notification dated 2.1.2004 had been entrusted the task of determining the "truthfulness or otherwise of the allegations contained in the newspaper item published in the Chandigarh edition of the Hindustan Times dated 28.11.2003". The Commission of Inquiry could not have, during the course of its deliberations, recorded findings in respect of matters alien to the newspaper report dated 28.12.2003. According to the learned counsel for the petitioners, through its report the Commission travelled far beyond the terms of reference, by opining on a later investigative report, which was published in the Hindustan Times on 16.10.2004.

42 It is not necessary for us to delve at any great length on the instant issue. While adjudicating upon the controversy in respect of the truthfulness or otherwise of the allegations contained in the newspaper report dated 27.12.2003, the Commission of Inquiry was required to examine the veracity of the affidavits filed by different persons, who appeared before it, as well as, the documents and other material placed (by such persons) for the consideration of the Commission, besides the statements of the said persons recorded by the Commission itself. In this behalf, reference needs to be pointedly made to the affidavit filed by Kanwar Sandhu, Resident Editor of the Hindustan Times, dated 16.2.2004, as well as the documents and information placed by him before the Commission which, according to him, were the basis on which the newspaper report of Manish Tewari, Principal Correspondent, Hindustan Times, was published on 28.12.2003. While examining the matter in its totality, the Commission also took into consideration facts narrated in a subsequent newspaper report dated 16.10.2004. It would be

pertinent to mention that according to the pleadings in the instant writ petition itself, the newspaper report, which appeared in the Hindustan Times on 16.10.2004, was an "investigative report of the Hindustan Times" on the same issue i.e. in respect of the allegations contained in the article dated 27.12.2003. In the circumstances noticed hereinabove, it is apparent, that the Commission of Inquiry was in a precarious situation. If it had not dealt with the subsequent investigative report of the Hindustan Times dated 16.10.2004, it would have been accused of not having examined the matter in its totality, and for having ignored vital information which was made available publicly. Now, that the Commission of Inquiry has dealt with the later investigative report of the Hindustan Times, which were reflected in its publication on 16.10.2004, it is being accused of having examined facts beyond the scope of its authority.

43 In the totality of the circumstances, noticed hereinabove, we are satisfied, that the Commission of Inquiry committed no illegality by taking into consideration the later investigative reports of the Hindustan Times, which were published by it on 16.10.2004. The Commission, in the first instance, issued notices in the national press on 22/23.1.2004 inviting persons and organisations acquainted with the facts and circumstances pertaining to the subject matter of enquiry. Since no one responded to the aforesaid notices, the Commission summoned persons from the Hindustan Times associated with the publication of the newspaper report dated 27.12.2003. After having gathered whatever was possible from the publisher of the aforesaid report, the Commission called for affidavits of all persons named in the report and also summoned them

for recording their statements. Having completed the aforesaid exercise to the extent possible, the Commission also examined the investigative report which was published in the Hindustan Times on 16.10.2004 (for affirming the facts depicted in the earlier report dated 27.12.2003). We are of the view, that it was imperative for the Commission to have examined the factual position narrated in the investigative report dated 16.10.2004, as the same was an expression/depiction/projection on the earlier newspaper report dated 27.12.2003, the veracity of which was the pointed issue of consideration before the Commission. In doing so, we are of the view, that the Commission did what it ought to have done. We, therefore, find no merit in the instant contention of the petitioners.

44 The fourth contention of the learned counsel for the petitioners was, that the findings of the Commission of Inquiry recorded in its report dated 17.12.2004 are vitiated on account of the fact, that Leonard A. Freeke was not summoned by the Commission of Inquiry to appear before it, so as to make a deposition in respect of the truthfulness or otherwise of the newspaper report dated 27.12.2003.

45 On the instant issue, certain facts narrated in the pleadings are relevant and are, accordingly, being collectively summarised hereinafter for recording our conclusion. The Commission of Inquiry, in its report, referred to a variety of reasons, on the basis of which it had arrived at the conclusion, that summoning Leonard A. Freeke for making a statement before the Commission would be an effort in futility (details whereof have been extracted in paragraph 17 hereinabove). The reasons recorded by the Commission are not being reproduced here again for reason of brevity. The interview of Leonard A. Freeke at the hands of

Jhujar Singh (respondent No.14), who is the Associate Senior Producer, and anchor of News Channel "Headlines Today", which was broadcast live on 17.10.2004 at 9.11 P.M. is a part of the pleadings in the instant case. Despite being lengthy, the same discloses an interesting reading and is, accordingly, being extracted hereunder:-

> " A day after the report the Punjab Chief Minister threatened to sue the newspaper. After meeting party leaders in Delhi on Sunday Amarinder Singh the accusations smacked of a conspiracy by political rivals. (Koi political log honge jinhone in ko ja kar contact kar liya hoga. Jo hamare khas dost hain Punjab main. So aisi baten to hoti rehti hain. Ye baat check Karen.) But don't accept. I am actually surprised that a serious newspaper like the Hindustan Times should come up with this.
>
> A National daily on Saturday reported that the Punjab Chief Minister and his son Raninder were involved in an illegal foreign exchange transaction. As Raninder is alleged to have initiated a project to provide high speed optical fibre links between business parks in Punjab and is alleged to have roped in his family friends Chetan Gupta and a Dutch Leonard Freeke for the project. Punjab Intranet Company purportedly set up by the Punjab Government was to execute the project. The project was however shelved when the newspaper first reported an illegal foreign exchange transaction in December 2003. A consultancy fee of Rs.46 lacs in foreign exchange was allegedly transferred via a Swiss account to Freeke to a Mauritius based Company.
>
> Amarinde later set up a Judicial Commission to probe the allegation but its report is still awaited.
>
> Well for the first time since the story broke on Saturday, Leonard Freeke the man at the center of the whole controversy has agreed to speak exclusively to 'Headlaines Today'. He now joins us on the telephone from Holland.

Leonard welcome to Headlines Today.

Tell me how long have you known the Chief Minister Amarinder Singh's son Raninder for?

We know each other ever since University in England and that was in 1987.

And you have been close friends have you since then?

Very much so. We saw each other regularly almost on a yearly basis. 2-3 times a year.

Whose idea was it to set up the Punjab Intranet Project? The idea basically started off on a conversation between me and Raninder. Later on Raninder and Sinha asked me to do a presentation on our activities in the Netherlands and to explore the possibilities for the Punjab. After the presentation everybody got very excited and we agreed on preparing a business plan and.... Actually during that meeting Scientific Advisor Dr. Rajan was asked for his opinion and he agreed on the enormous.. not clear) of the project for the Punjab people.

Did you ever meet the Punjab Chief Minister in connection with the project and if so how many times and when and where?

We met twice exclusively on the subject. First time was in Chandigarh in February 2003 together with Mr. Sinha and later at his residence in Patiala in August 2003.

Well why and when did you then fall out with Raninder over this whole issue?

I fell out early this year when I found out that Raninder was not telling the truth but was instead using me as a scapegoat for his own or his family's irregular activities.

Why did you feel he was not telling the truth? What was he saying?

I found out that what he was saying was not in line with the truth as I know it. I found out that Mr. Gupta was one of his puppets and was instrumental to channeling money's abroad.

Well in fact Mr. Gupta who you allege is a family friend of Amarinder Singh and his son Raninder in fact is alleged to have sent you 55,000 dollars. When was this and for what reason did they send you this money?

I am not aware of actually Mr. Gupta sending me the 55,000 dollars that everyone seems to be talking about. There was money paid but as many companies do with whom I have contracts moneys are paid Punjab Government actually never paid us any money.

So who sent you that money?

That money was sent from Switzerland by a company we had an agreement with called SMX that later on we found was connected to Gupta.

And Mr. Gupta you say are you saying was connected to Amarinder Singh or Raninder Singh?

Gupta was introduced to me by Raninder Singh as a close family friend.

So are you then drawing a connection between the Chief Minister and his son and the money that was sent to you?

Basically Gupta was instrumental according to Raninder sending money abroad and we actually refused to receive this money because we had an agreement with the Government and not with Mr. Gupta.

So why did you think they were sending the money through Mr. Gupta and not officially and directly from the Punjab Government?

Well we can only guess. But as I said I fell out with Mr. Raninder Singh when I found out that I was being used as a scapegoat and as a front for his I think very irregular activities.

Now you also allege that you were owed 1 million Euro for the project but Raninder wanted to send you 2.5 million Euro.

Again we can only guess. However we refused outright to

receive this money. We had agreed with the Punjab Government for 1 Million Euro to build the Internet Exchange. Again we did not want a third party we were not familiar with to pay us. The suggestion of Raninder was highly irregular that is not according to the way we do business over here in Europe.

No tell me Leonard when he said no no instead of 1 million Euro we would send you 2.5 million Euro what did he ask you to do with that money then?

He suggested that we could pay the money back later. We were shocked with the suggestion and told him off.

So basically what is the wrong doing that you are suggesting that the Chief Minister and/or his son are alleged to have committed?

I find.. I am not a public prosecutor nor a Judge or a representative of the Indian Legal system. However I do know as much that it is highly irregular for Indian Government officials or their family members to direct money's abroad though Swiss Bank accounts..... not clear) with those parties are involved in seemingly illegal activities.

But the Chief Minister says that the documents you have provided to the media and the e-mail is all fake. He says you are a computer expert and you could have faked the e-mails and all the other evidence?

First of all I am not a computer expert and secondly that is not the truth as we all know it. Currently there are several easy and undisputed ways to prove the authenticity of all the documents in question.

Right anyway. We will be tracking the story as it unfolds.

Leonard Freeke

Thank you very much for talking to Headlines Today.

Thank you as well. Have a pleasant evening."

A perusal of the aforesaid statement of Leonard A. Freeke reveals, that he was not a recipient of any funds for the project. This assertion at his

hands, if taken to be true, blows the wind out of the sails of the contention of `Hawala' transactions put forth by the petitioners.

46 The fact that Leonard A. Freeke had imposed certain conditions for appearing before the Commission of Inquiry, in the first instance, is a matter of record. The fact that he subsequently agreed to make a deposition before the Commission of Inquiry, and that, he addressed communications in that behalf to the Chief Justice of this Court, is also a matter of record. These facts came to be published in the newspaper reports carried by the Hindustan Times, from time to time, is also apparent from the pleadings in the writ petition. The fact that Leonard A. Freeke was ready and willing to disclose all that he knew on the subject became clear when he appeared in a live broadcast for an exclusive interview on the subject is also clear. All the petitioners, who are Members of Parliament and who have been interested right from the first day to get to the root of the matter, must obviously have been aware of the aforesaid sequence of facts, as well as, the willingness of Leonard A. Freeke to appear before the Commission of Inquiry. Yet the petitioners, who could have also appeared before the Commission, in their own right, did not choose to collect any such information from him (Leonard A. Freeke), to place the same before the Commission. The petitioners have been raising a voice in unison that the truth of the matter should be investigated. The petitioners are representatives of the people. There was a person willing (according to them to disclose the aforestated truth), yet the petitioners chose not to collect any such information from Leonard A. Freeke and place the same before the Commission. Even if statement of Leonard A. Freeke in his interview extracted above is taken

to be the gospel truth, it is not possible to draw any serious adverse inferences against any of the respondents except to the extent that he seems to have fallen apart from his old time friend Raninder Singh (respondent No.7).

47 Keeping in view the diverse tactics adopted by Leonard A. Freeke from time to time, as are apparent from the report of the Commission of Inquiry, as also, from his interview to the aforestated News Channel on 17.10.2004, a perusal whereof reveals, that he had nothing to add to the insinuations contained in the newspaper report dated 27.12.2003 except for some more vague and suggestive insinuations. And very importantly his having not controverted the factual position noticed in his affidavit examined by the Commission it becomes quite clear that he was either playing games or he had nothing of serious consequence to disclose to the Commission. We are, therefore, of the view, that the Commission of Inquiry was fully justified in deciding to dispense with Leonard F. Freeke from the investigative process. We are also of the view, that the petitioners, as representatives of the people, ought to have done more than merely making allegations, if they were convinced with the truth of the facts contained in the newspaper report dated 27.12.2003. In view of the facts noticed in the foregoing paragraph, besides finding no merit in the instant contention, we are of the view, that it certainly does not lie in the mouth of the petitioners to raise the instant contention.

48 Besides the first contention advanced on behalf of the petitioners, noticed hereinabove (which was subject matter of substantial emphasis), the instant, the fifth and the last in the series of contentions advanced by the learned counsel for the petitioners, was also subject

matter of great emphasis. Through the instant contention, learned counsel for the petitioners desires to suggest that the Commission of Inquiry did not have sufficient means to conduct a fair and reasonable investigation on the subject matter, assigned to it for the purpose. It was, therefore, the vehement contention of the learned counsel for the petitioners, that the investigation into the matter should be conducted by the Central Bureau of Investigation, and a prayer to the aforesaid effect was repeatedly made to us requiring us, to issue a writ in the nature of mandamus, directing a probe/investigation into the allegations contained in the newspaper report dated 27.12.2003 through the Central Bureau of Investigation.

49 According to the learned counsel for the petitioners, a fair and reasonable investigation was not possible under the provisions of the Foreign Exchange Management Act, 1999 (hereinafter referred to as the `FEMA'), specially when, as is alleged in the present case, the culpability at the hands of those concerned is of a serious criminal nature and also because the aforesaid culpability transgresses the boundaries of this country. It is submitted that the facts and material as published by the Hindustan Times, along with the material disclosed in the pleadings of the case, leave no manner of doubt about the involvement of Captain Amarinder Singh, the then Chief Minister of Punjab (respondent No.6) and his son (respondent No.7) and their associates in “hawala” transactions, and of their having committed offences punishable under the Prevention of Money Laundering Act, 2002 and the Prevention of Corruption Act, 1988, besides some offences even under the provisions of the Indian Penal Code, 1860. Learned counsel for the petitioners, in this behalf, referred to the Preamble of the FEMA, so as to assert that the

aforesaid statute is concerned only with the objective of orderly development and maintenance of the foreign exchange market in India. It was pointed out, that under the provisions of the FEMA, dealing in foreign exchange, except with the permission of the Reserve Bank of India, is prohibited. Attention of the Court in this behalf was invited to section 3 of the FEMA Act, relevant extract whereof is being reproduced hereunder:-

> "Section 3. Dealing in foreign exchange, etc.- Save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall -
>
> (a) deal in or transfer any foreign exchange or foreign security to any person not being an authorised person.
>
> (b) make any payment to or for the credit of any person resident outside India in any manner.
>
> (c) receive otherwise through an authorised person any payment by order or on behalf of any person resident outside India in any manner."

Learned counsel for the petitioners also invited the Court's attention to section 13 of the FEMA, which delineates the penalties which may be imposed for the contravention of the provisions of the aforesaid Act. Learned counsel for the petitioners submitted that a penalty upto three times the sum involved has been stipulated where the contravention involved is upto Rs.3 lacs, although a heavier penalty is permissible for a continuing contravention under the Act. Learned counsel for the petitioners also invited the Court's attention to section 37 of the said Act, wherein power of search and seizure has been vested in the officers of the Enforcement Directorate, on the same pattern as has been conferred on

Income tax authorities under the Income Tax Act, 1961. Despite the aforesaid provision, it is the vehement contention of the learned counsel for the petitioners, that the powers vested in the officers of the Enforcement Directorate under the FEMA are not sufficient to unearth the extent of the wrong-doing involved at the hands of the respondents. It is also pointed out, that the penalties envisaged under the FEMA are only limited to imposition of fines specified in section 13 of the said Act, and that, there is no provision for any custodial punishment therein. It is, therefore, submitted, that the issues of corruption, money laundering, "hawala" transactions and violations of the penal laws involved in the present case can only be properly investigated by a specialized agency of the Central Government, like the Central Bureau of Investigation and, therefore, deserved to be entrusted only to it.

50 Carrying the thread of the contention further, it is submitted that a number of newspaper reports (copies whereof have been placed on the record of this case) disclose the involvement of the highly placed politicians and Government officers of the State of Punjab, as also a concerted cover up attempt at the behest of all of them by the appointment of a Commission of Inquiry to scuttle any meaningful investigation into the matter. Pointing to the proceedings held by the Punjab Legislative Assembly on the floor of its House on 13.10.2005, it is submitted, that a demand had been made even by the then leader of the opposition Mr. Parkash Singh Badal (the present Chief Minister of Punjab) for an enquiry at the hands of the Central Bureau of Investigation but the same was rejected, on the ground that all papers and facts in the matter have been forwarded to the Enforcement Directorate. According to learned counsel,

in view of the limited powers vested in the Enforcement Directorate, there is need for an investigation into the matter, at the hands of the Central Bureau of Investigation, for effectively determining the criminal culpability of persons involved in transferring huge funds of money out of India through illegal channels and also to ensure that appropriate action can be taken against them under the relevant penal laws. Since help in the matter would be required from foreign investigating agencies, as well as from Courts in foreign countries, letters rogatory may have to be sent to foreign Courts, for a complete and effective investigation in the matter, to know the extent and the manner, in which money has been transferred abroad. This aspect of the investigation, according to learned counsel, can only be handled by the Central Bureau of Investigation. It is also submitted, that there is need in this case to confiscate the money sent abroad through illegal channels and to take action, against the emerging violators, under the Prevention of Money Laundering Act, 2002. It is, therefore, reiterated that the probe be required to be conducted by the Central Bureau of Investigation by issuing an appropriate writ, order or direction.

51 As against the aforesaid submissions of the learned counsel for the petitioners, it is vehemently contended on behalf of the respondents, that the facts, on the basis of which allegations have been levelled against Captain Amarinder Singh, the then Chief Minister of Punjab(respondent No.6) and his son Raninder Singh (respondent No.7) are all based on newspaper reports. The particular newspaper report, under reference, dated 27.12.2003 was drafted in a designedly vague and suggestive manner, imputing acts of omission and commission to the

respondents in the nature of innuendoes. It is therefore submitted, that even the newspaper reports relied upon by the petitioners, did not clearly make an accusation of any alleged unexplained transfer of money by any of the respondents, as has been alleged at the hands of the petitioners. Referring to the newspaper report under reference, it is submitted that the same was a calculated narrative to assign a role to officers of the State Government in a seemingly illegal deal. In the totality of the circumstances, noticed hereinabove, coupled with the fact, that no material worth the name has been placed on the record of this case by the petitioners to authenticate the allegations being levelled by them against the respondents, it is submitted, that contents of newspaper reports cannot constitute a valid basis for an investigation of the kind sought by the petitioners.

52 Learned counsel for the respondents, referring to the clear and categoric assertions made in the written statement filed on behalf of the State of Punjab, submitted that the entire case of the petitioners is based on illegalities and wrong-doings for showing favour to the Punjab Intranet Company. It is pointed out, that there is no such company in existence, therefore, the question of any favour or illegal payment of money to the company or its partners by the State Government does not arise. It is, therefore, contended, that the allegations levelled by the petitioners are frivolous, vexatious and malicious and that the same had been made with the avowed object of maligning Captain Amarinder Singh, the then Chief Minister of Punjab, who was a political opponent of the petitioners.

53 It is pointed out, that the Enforcement Directorate is the most

apt and the only competent agency for enquiring into allegations of foreign exchange violations of the kind suggested in the newspaper report dated 27.12.2003. It is pointed out, that the Enforcement Directorate is already conducting an investigation into the matter. It is highlighted that in the instant matter investigation by the Enforcement Directorate was ordered by the Union Finance Minister Jaswant Singh, when the BJP-Akali Dal Government was in power in the Centre. Accordingly, it is submitted, that whilst an investigation by the Enforcement Directorate is under way, the demand for a parallel investigation by another agency is wholly unwarranted. According to learned counsel , the FEMA being a special statutory enactment, investigation in respect of wrong-doings thereunder can only be carried out effectively by officers authorised by the FEMA and not through any other agency.

54 The Additional Solicitor General of India, representing respondent No.1, while responding to the instant issue canvassed by the learned counsel for the petitioners, asserted that the belief in the minds of the petitioners that the provisions of the FEMA are inappropriate to deal with the investigations to be carried out in the present case, is misconceived. According to learned counsel, adequate authority is vested in the Enforcement Directorate under the provisions of the FEMA to conduct investigations even in foreign countries. In this behalf, learned counsel for respondent No.1 has invited our attention to sections 37 and 38 of the FEMA. The aforesaid provisions are being reproduced hereunder:-

> "37. Power of search, seizure, etc.- (1) The Director of Enforcement and other officers of Enforcement, not below

> the rank of an Assistant Director, shall take up for investigation the contravention referred to in section 13.
>
> (2) Without prejudice to the provisions of sub-section (1), the Central Government may also, by notification, authorise any officer or class of officers in the Central Government, State Government or the Reserve Bank, not below the rank of an Under Secretary to the Government of India to investigate any contravention referred to in section 13.
>
> (3) The officers referred to in sub-section (1) shall exercise the like powers which are conferred in income-tax authorities under the Income-tax Act, 1961 (43 of 1961) and shall exercise such powers, subject to such limitations laid down under that Act.
>
> 38. Empowering other officers.- (1) The Central Government may, by order and subject to such conditions and limitations as it thinks fit to impose, authorise any officer of customs or any central excise officer or any police officer or any other officer of the Central Government or a State Government to exercise such of the powers and discharge such of the duties of the Director of Enforcement or any other officer of Enforcement under this Act as may be stated in the order.
>
> (2) The officers referred to in sub-section (1) shall exercise the like powers which are conferred on the income-tax authorities under the Income-tax Act, 1961 (43 of 1961), subject to such conditions and limitations as the Central Government may impose.

A perusal of section 37(3) of the FEMA reveals, that officers of the Directorate of Enforcement are vested with powers of search and seizure akin to those which are conferred on Income-tax authorities under the Income-tax Act, 1961. Learned counsel for respondent No.1, accordingly, invited our attention to section 131 of the Income-tax Act, 1961, which is being reproduced hereunder:-

"131. Power regarding discovery production of evidence, etc.

(1)The Assessing Officer, Deputy Commissioner (Appeals_ Joint Commissioner, Commissioner (Appeals) and Chief Commissioner or Commissioner shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908(5 of 1908), when trying a suit in respect of the following matters:-

(a) discovery and inspections;

(b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath.

(c) compelling the production of books of account and other documents; and

(d) issuing commissions.

(1A) If the Director General or Director or Joint Director or Assistant Director or Deputy Director or the authorised officer referred to in sub-section(1) of section 132 before he takes action under clauses (i) to (v) of that sub-section, has reason to suspect that any income has been concealed, or is likely to be concealed, by any person or class of persons, within his jurisdiction, then, for the purposes of making any enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub-section (1) of the Income-tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other Income-tax authority.

(3) Subject to any rules made in this behalf, any authority referred to in sub-section (1) or sub-section (1A) may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act:

Provided that an Assessing Officer or an Assistant

Director or Deputy Director shall not-

(a) impound any books of account or other documents without recording his reasons for so doing, or

(b) retain in his custody any such books or documents or a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Chief Commissioner or Director General or Commissioner or Director therefor, as the case may be."

55 Relying on section 131(1), learned counsel for respondent No.1 states, that on the issue of discovery and inspection, as well as, the enforcement of attendance of persons, to be examined in connection therewith, officers under the Income-tax Act, 1961, have the same powers as are vested in a Court under the provisions of the Code of Civil Procedure, 1908. Learned counsel for respondent No.1 submitted that the aforesaid power includes the authority to require the production of documents and other material. So as to substantiate his contention, that the provisions of the Code of Civil Procedure, 1908, on the issue of production of documents and other material are akin to the provisions of section 166A of the Code of Criminal Procedure, 1973, learned counsel for the Union of India invited our attention to sections 77 and 78 of the Code of Civil Procedure, 1908 (as amended by Code of Civil Procedure (Amendment) Act, 2002). Sections 77 and 78 of the amended Code of Civil Procedure are being extracted hereunder:-

"77. Letter of request.

In lieu of issuing a commission the court may issue a letter of request to examine a witness residing at any place not within India.

78. Commissions issued by foreign courts

Subject to such conditions and limitations as may be

> prescribed, the provisions as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by or at the instance of -
>
> (a) courts situate in any part of India to which the provisions of this code do not extend; or
>
> (b) courts established or continued by the authority of the Central Government outside India; or
>
> (c) courts of any State or country outside India."

A perusal of the aforesaid provisions reveal, that there are adequate provisions under the Code of Civil Procedure for examining witnesses residing outside India.

56 Learned counsel for the Union of India then invited our attention to rule 5 of Order XXVI of the Code of Civil Procedure, which is being extracted hereunder:-

> "5. Commission or request to examine witness not within India.
>
> Where any court to which application is made for the issue of a commission for the examination of a person residing at any place not within India is satisfied that the evidence of such person is necessary, the court may issue such commission or a letter of request."

Based on the aforesaid provision, learned counsel for the Union of India vehemently contends, that in case of necessity, it is clearly open to the authorities under the provisions of the FEMA to examine persons residing beyond the territories of this country, and that, the authority vested under the Code of Civil Procedure (which authority is available to the officers of the Enforcement Directorate) includes the jurisdiction to enforce attendance, discovery, inspection and production of documents. It is, therefore, pointed out that the authority vested for purposes of

investigation under the FEMA cannot be considered to be in any manner less than the authority vested for the same purpose under section 166A of the Code of Criminal procedure, 1973.

57 In order to substantiate his aforesaid contention, learned counsel for the Union of India also invited our attention to the decision rendered by the Calcutta High Court in Issac Manasseh Mayee V. C. Subba Rao and others, 57 CWN 605, wherein the Calcutta High Court, inter alia, observed as under:-

> " Upon a consideration of all these facts and circumstances, I make this rule absolute and quash the order of respondent No.1, dated the 7th August, 1951, and direct him or the respondent No.3, whoever is in seisin of the income-tax assessments of the petitioner for the years 1949-50, 1960-51 and 1951-52, to issue a letter of request to the Supreme Court of Singapore, in form analogous to the form prescribed in the Code of Civl Procedure, and cause it to be forwarded through the ministry of external affairs of the respondent No.2, for the examination of (1) Issac Brooke Abbett, (2) Mr. Balwin Lowick, Senior partner of Messrs Rennie Lawick & Co., (3) The Secretaries of the two Hotels, all of whom are mentioned in the petition, dated the 28th July, 1951, filed before the Income-tax Officer. It is not possible to make orders for taking extracts from documents and accounts at Singapore. If any documents are required to be produced for examination of the witnesses the petitioner must move the Commissioner appointed by the Supreme Court, Singapore, or that Court to cause the production thereof at the examination."

Reference was also made to the decision rendered by the Rajasthan High Court in Messrs Jupiter General Insurance Co. Ltd. V. M/s Dhandhiya Jewellers Jaipur, AIR 1973 Rajasthan 156, wherein the Rajasthan High

Court, relying on a judgment rendered by the Supreme Court, the Court observed as under:-

> " It was held by their Lordships of the Supreme Court in Filmistan Pvt. Ltd. Bombay V. Bhagwandas Santprakash, AIR 1971 SC 61 that Section 77 read with Section 75 empowers Court to issue letter of request to any person other than Court to examine witnesses residing at any place not within India and this power is not subject to any reciprocal agreement between the Governments. In the case before their Lordships of the Supreme Court the question as to whether evidence can be taken on oath under the above procedure was left open. The defendant has, however, filed a letter from the Government of India, Ministry of External Affairs, New Delhi, dated 4th November, 1971, which runs as follows:-
>
> "To
>
> Shri Jugal Kishore Gupta,
> Advocate, Jaipur.
>
> " Sir,
>
> I am directed to refer to your letter dated 19th October, 1971 on the subject mentioned above and to say no reciprocal arrangements are required with foreign Governments for examination of witnesses on commission in civil cases.
>
> 2. The normal procedure of correspondence is through diplomatic channels. Such letters of request are sent by the Indian Courts through the State Governments to the Ministry of External Affairs. After due scrutiny in the Ministry and ensuring that letters of requests are in the prescribed forms, such requests are forwarded to foreign Courts through the Indian Missions of the countries concerned for execution. The commission fees for execution of such letters of requests are deposited in the Indian Courts by the parties concerned and all the State Governments in

> India are already aware of the procedure. You may, therefore, request the Court concerned to ascertain the procedure from the State Government by quoting our two circular letters No.F22(2)-Cons/58/(Dal/69/1/96) dated the 8th June, 1960 and No.F441(16)/66 dated the 20thJuly, 1966 addressed to all State Governments. The Government of India, however, have not entered into reciprocal arrangements with any foreign country including the U.S.A. in this respect so far and such letters of requests are generally executed by the foreign Governments as a matter of international courtesy and vice-versa."
>
> If the above procedure is followed and evidence is recorded by a Court in the United States of America it will be recorded on oath. Of course the letter of request for commission will not be issued to the Court in the United States of America It will be issued in accordance with the procedure laid down in the above letter."

58 In addition to the aforesaid submissions, learned counsel for respondent No.1, having obtained instructions in the matter informed us, that consequent upon a reference having been made to the Enforcement Directorate under the FEMA, the investigation in the matter is almost complete. It is pointed out, that only some information is awaited from Mauritius, whereupon the process of investigation will come to an end. It is also clearly and categorically submitted by learned counsel for respondent No.1, that the investigations being made by the Enforcement Directorate under the FEMA would be absolutely independent of the findings recorded by the Commission of Inquiry constituted by the Punjab Government through the notification dated 2.1.2004, and that action would be taken, if called for, irrespective of the determination rendered

by the Commission of Inquiry in its report dated 17.12.2004.

59 Having considered the matter in its totality, it is not possible for us to accept the contention of the learned counsel for the petitioners, that the provisions of the FEMA do not vest appropriate power with the officers of the Enforcement Directorate to effectively investigate the into matter, which is subject matter of controversy in the instant writ petition. We are of the view, that under sections 37 and 38 of the FEMA, officers of the Enforcement Directorate are vested with the same powers as are vested with the Income-tax authorities under the Income-tax Act, 1961. A perusal of section 131 of the Income-tax Act, 1961, clarifies that the authorities under the Income-tax Act are vested with the same powers as are vested in a Court under the Code of Civil Procedure, 1908. On a perusal of sections 77 and 78 read with rule 5 of Order XXVI of the Code of Civil Procedure, 1908, we have no doubt that a Court, under the Code of Civil Procedure, can issue commissions as also, letters of request to examine witnesses residing outside the territories of India. We express our respectful agreement with the conclusions drawn by the Calcutta High Court in Issac Manasseh Meyer, and by the Rajasthan High Court in J.G.Insurance Co. (supra) (which was based on the judgment rendered by the Apex Court in Filmistan Pvt. Ltd. Bombay V. Bhagwandas Santprakash, AIR 1971 SC 61). We, therefore, hereby conclude that the petitioners' belief, that the provisions of the FEMA, under which the Enforcement Directorate is conducting investigation into the allegations/facts recorded in the different articles, are inadequate for carrying out an effective investigation, is misconceived.

60 It would be pertinent to mention that learned Additional

Solicitor General of India handed over to us a bulk of papers in a sealed cover. We were informed that the sealed cover enclosed the details of investigations carried out by the Enforcement Directorate. In view of the factual and legal position depicted hereinabove, we were originally of the view, that it was not necessary to open the sealed cover. The desire to be sure, whether or not, the exercise was being carried out effectively, had the better of us, and to stem out any suspicion in the matter, we chose to open the same. In the sealed cover, we found chronological details of the process of investigation initiated by the Enforcement Directorate. The communications addressed by the Enforcement Directorate and received by it were also found enclosed. A perusal of the enclosures reveal communications addressed to different High Commissions and Embassies of India and the responses thereto. They also reveal communications addressed to the SEBI, Mumbai, and the responses thereto. There were a host of other correspondence which do not need to be referred to. Most interestingly, the enclosures contain a questionnaire addressed to Leonard A. Freeke, which was delivered to him by the Embassy of India at the Hague in the Netherlands. The response to questionnaire addressed by the Enforcement Directorate to Leonard A. Freeke dated 28.12.2005 was received through the Indian Embassy at the Hague. It would be pertinent to mention that Leonard A. Freeke's response runs into 183 pages including 20 annexures. Having examined the contents of the sealed cover, we are, prima facie, satisfied with the efforts of the Enforcement Directorate in its aforesaid investigative process are as they ought to have been. We hope and expect that after the receipt of any other further information that it requires, it will effectively record its conclusions

without reference to the determination at the hands of the Commission of Inquiry constituted by the State Government through the notification dated 2.1.2004. It is also natural to conclude, that the fear of the petitioners that a complete and effective investigation would not be possible through the Enforcement Directorate, is clearly unjustified. For the reasons recorded above, we find no merit even in the last contention advanced on behalf of the petitioners.

61 Despite our aforesaid conclusions on all the issues canvassed at the behest of the petitioners, we consider it just and appropriate to take into considerations three submissions advanced by Mr. R.S. Cheema, Senior Advocate and Advocate General, Punjab, on behalf of his clients. The aforesaid submissions are being summarised hereunder:

First of all it was contended, that the petitioners having acted with intentional laches, are disentitled from an adjudication of the controversy raised by them, through the instant writ petition.

The second contention advanced was, that in the ultimate analysis, the prayer of the petitioners was for the issuance of a writ in the nature of mandamus to direct an investigation into the controversy arising out of various newspaper reports, which appeared in the Hindustan Times, through the Central Bureau of Investigation. This plea, according to the learned counsel for respondent No.4, is not available to the petitioners under the principle of res judicata i.e. in terms of the mandate of section 11 of the Code of Civil Procedure, 1908.

The last contention on behalf of the respondents was that a public interest litigation is not maintainable on the subject matter of the controversy raised by the petitioners through the instant writ petition.

62 In order to authenticate the first contention, namely, that the issues canvassed on behalf of the petitioners, deserve to be rejected, on the plea of intentional laches, learned counsel has invited our attention sequentially to the facts, which need to be taken into consideration, for dealing with the instant issue. In this behalf, it is pointed out that the controversial newspaper report appeared in the Hindustan Times in its Chandigarh edition published on 28.12.2003. Consequent upon an alleged public out-cry on the matter, the Government issued a notification dated 2.1.2004 i.e. within one week of the date of publication of the controversial newspaper article, appointing a Commission of Inquiry under the Commissions of Inquiry Act, 1952. The Commission of Inquiry submitted its report dated 17.12.2004. For the first time, the petitioners filed Writ Petition (Criminal) No.105 of 2005 titled as Sukhdev Singh Dhindsa and others V. Union of India and others, in the Delhi High Court, in the year 2005. On the disposal of the aforesaid writ petition, as not maintainable, by the Delhi High Court, the petitioners approached this Court by filing Civil Writ Petition No.5066 of 2005 on 24.3.2005. From the aforesaid narrative, learned counsel emphatically pointed out, that the petitioners did not move a little finger to invoke legal redress during the entire upheaval caused by the allegedly controversial article which appeared in the Hindustan Times in 2003. The investigation into the matter concluded with the submission of the report at the hands of the Commission of Inquiry, in the year 2004. According to learned counsel, the petitioners commenced to deliberate on the issue, and raised a hue and cry only after the entire matter had come to an end, for the first time, in the year 2005 before the Delhi High Court. And the petitioners eventually

invoked the jurisdiction of a Court having the jurisdiction to deal with the controversy i.e. of this Court in 2006.

63 According to the learned counsel for the respondents, the petitioners not only permitted the constitution of the Commission of Inquiry under the Commissions of Inquiry Act, 1952, without any demur, they also did not respond to notices issued in six different newspapers by the Commission of Inquiry, requiring those who had any information on the subject matter of the controversy, to appear before it. According to learned counsel, the petitioners having permitted the proceedings being conducted by the Commission of Inquiry to continue without any interruption, cannot be allowed to raise such pleas, as have been noticed on their behalf hereinabove, specially when there is no word of explanation, for the delay in the pleadings (of the writ petition).

64 It is not possible for us to accept the instant contention of the learned counsel for respondent No.4. A plea of delay and laches to defeat a litigation initiated under Article 226 of the Constitution of India cannot be accepted, merely because there is laxity in expeditiously invoking the extraordinary jurisdiction vested in a High Court. An adjudication on such a plea is a matter of discretion vested with the Court, exercising the said jurisdiction. Ordinarily, a plea of delay and laches can defeat a lis wherein the petitioners are guilty of unexplained delay. However, in a case raising issues of public interest, as the one in hand, it is inappropriate to reject a lis, merely on the plea of delay and laches. A public interest litigation, after all, is not a lis through which the petitioners seeks some personal gain or benefit or relief. In a public interest litigation the legal process is invoked on behalf of the public, and for the benefit of the

public. Once it is accepted that such a petition is maintainable as a cause in public interest, there can normally be no justification in rejecting the same on the technical plea of delay and laches. It is not necessary for us to reiterate facts and circumstances which constitute the controversy between the parties yet again, as the same have been dealt with repeatedly hereinabove, wherein representatives of the people of this region i.e. 8 elected Members of Parliament, claim an investigation into allegations with serious imputations against a Chief Minister and his son. It would be inappropriate, rather wrongful, to accept a technical plea to defeat such a public cause projected in the petition. To refrain from, deciding such a matter on merits, on the basis of a plea of delay and laches, would amount to depriving all those citizens whom the petitioners represent, a decision on merits. In the aforesaid view of the mater, it may well amount to shirking our responsibility of the authority vested in us under Article 226 of the Constitution of India. We, therefore, find no merit in the first contention of the learned counsel representing respondent No.4.

65 The second contention advanced by learned counsel for respondent No.4 is primarily based on the provisions of section 11 of the Code of Civil Procedure, 1908 i.e. a plea under the principle of res judicata. In order to substantiate the instant plea, learned counsel for respondent No.4 states, that through the instant writ petition, the pointed relief sought by the petitioners is for a direction to respondent No.1 to have an investigation conducted into the matter by the Central Bureau of Investigation, which, according to the petitioners, is an independent investigating agency and which alone is in a position to effectively conduct an enquiry into the matter without being influenced. Learned

counsel for respondent No.4 has also invited our attention to the pleadings in Civil Writ Petition No.5066 of 2005, which were sought to be placed on the record of this case, through Civil Misc.No.9195 of 2006. From the pleadings in CWP No.5066 of 2005, learned counsel for respondent No.4 invited our attention to the questions of law framed in paragraph (v) thereof, which is being extracted hereunder:-

> "v. Whether in view of the evidence and in view of the representations submitted the respondents are duty bound to initiate investigations into the same through the Directorate of Revenue Intelligence and the Directorate of Enforcement and/or any independent agency like the CBI?

Based on the pleadings in the writ petition and the question of law, extracted hereinabove, learned counsel for the respondents invited our attention to sub-paragraph (ii) of the prayer clause in CWP No.5066 of 2005, which is being reproduced hereunder:-

> "ii. issue an appropriate writ order or direction to the respondent No.1 to get the facts mentioned in the petition which clearly establish that respondents No.6,7 and their associates have committed the offence of Hawala transactions foreign exchange violations and corruption investigated immediately through the Directorate of Revenue Intelligence and the Directorate of Enforcement and any independent agency/CBI.
>
> ii. For directions in particular to respondent No.1 that keeping in view the high political office held by respondent No.6 to ensure that the investigations are conducted by the concerned agencies in an absolutely fair and impartial manner."

According to the learned counsel for respondent No.4, on the same controversy, as has now been raised by the petitioners through the instant

writ petition, the petitioners had earlier approached this Court by filing CWP No.5066 of 2005, wherein the petitioners had sought an investigation into the subject matter of controversy through the Directorate of Revenue Intelligence and the Directorate of Enforcement or alternatively any other independent agency, including the Central Bureau of Investigation. It is, therefore, vehemently contended, that with the vesting of the investigation into the hands of the Enforcement Directorate under the FEMA (details whereof have been narrated in the various paragraphs hereinabove), the earlier writ petition filed by the petitioners, namely, CWP No.5066 of 2005 was rendered infructuous, since one of the alternative prayers made on behalf of the petitioners had been accepted by the authorities. It is also submitted that the enquiry marked to the Enforcement Directorate, is now stated to be almost complete, and as such, it does not lie in the mouth of the petitioners to insist on an investigation at the hands of the Central Bureau of Investigation.

66 So as to point an accusing finger at the petitioners, learned counsel invited our attention to the changed questions of law formulated in paragraph 5 of the writ petition, wherefrom our attention was pointedly drawn to sub-paragraphs (vi) and (vii) which are being reproduced hereunder :-

> "vi. Whether in view of the evidence and in view of the representations submitted, the respondents are duty bound to initiate investigations into the same through the CBI?
>
> vii. Whether the Enforcement Directorate is equipped with sufficient powers to go into the entire gamut of the allegations or an additional investigation by the CBI is

necessary?"

Learned counsel has also invited our attention to the consequential change in the prayer clause of the instant writ petition. Relevant sub-paragraphs (iii) and (iv) of the prayer clause are being reproduced hereunder:-

> "iii. issue an appropriate writ order or direction to the respondent No.1 to get the facts/allegations relating to the alleged transfer of funds form India to abroad as is disclosed by the newspaper reports and the criminal culpability of the persons involved therewith investigated by the CBI.
>
> iv. direct in particular to respondent No.1, that keeping in view the high political office held by respondent No.6, to ensure that the investigations are conducted by the concerned agencies in an absolutely fair and impartial manner."

It would be pertinent to mention that whilst in the earlier writ petitions, the petitioners had sought investigation at the hands of the Enforcement Directorate as one of the acceptable options, in the present writ petition the petitioners have questioned the authority of the Enforcement Directorate as inadequate to investigate into the controversy. Through the present writ petition, the clear and unequivocal prayer is for an investigation at the hands of the Central Bureau of Investigation alone. This alteration in the stance adopted by the petitioners is stated to be unacceptable in law, in terms of the provisions of section 11 of the Code of Civil Procedure.

67 It would be pertinent to mention that the instant plea was pressed by learned counsel after the counsel for the rival parties had concluded their submissions on merits. It is not possible for us to allow the respondents to canvass the instant plea, which is essentially in the

nature of a preliminary objection at the conclusion of the submissions, specially when, the learned counsel for the rival parties addressed this Court for hours together over a number of days.

68 Despite our conclusion recorded on the issue in hand in the foregoing paragraph, we are satisfied, that the instant plea deserves to be declined on merits as well. For a plea raised under section 11 of the Code of Civil Procedure to succeed, it is essential that the former litigation was between the same parties and for the same cause of action "has been heard and finally decided". The instant plea has been raised, on the basis of the petitioners having earlier filed CWP No.5066 of 2005 on the same cause of action as has been raised in the instant writ petition, between the same parties. The instant plea raised on behalf of the respondents will have to be accepted if the earlier writ petition can be stated to have been heard and finally decided. It is not a matter of dispute that the earlier writ petition was disposed of as premature. A matter disposed of as premature can certainly not be stated to have been "finally decided". Therefore, neither the principle of res judicata nor the provisions of section 11 of the Code of Civil Procedure can be stated to be applicable to this case. It is, accordingly, not possible for us to accept the second contention advanced on behalf of the learned counsel for the respondents.

69 The third and the last contention advanced on behalf of the learned counsel for respondent No.4 relates to the permissibility of the filing of the instant writ petition by the petitioners as a cause in public interest. In this behalf, the vehement contention of the learned counsel for the respondents was, that the controversy does not invoke a cause, with which any of the petitioners, have a personal interest and as such

must be deemed to be a public interest litigation. Learned counsel for the respondents also vehemently contended, that a public interest litigation cannot be aimed at publicity, which, according to learned counsel, is the primary cause for filing the instant writ petition. It is also pointed out, that a public interest litigation is not permissible to thrash out political interests between rival parties. This, according to the learned counsel for the respondents is also one of the main objects in filing the instant writ petition. Additionally, it is the contention of the learned counsel that unauthenticated facts emerging out of newspaper reports cannot be sufficient justification at the hands of the petitioners to initiate a public interest litigation. It is insisted that in the instant case the claim raised by the petitioners is based on facts of which the petitioners themselves are not certain. It is pointed out in this behalf that, that is exactly the reason for demanding an investigation at the hands of the Central Bureau of Investigation. It is also the contention of the learned counsel that claims against an individual cannot be permitted to be agitated through a public interest litigation. In this behalf, it is vehemently pointed out that the entire aim and object of the instant writ petition is to initiate an investigation against Captain Amarinder Singh (respondent No.6), the then Chief Minister of Punjab, as well as, his son Raninder Singh (respondent No.7) on account of a newspaper report, which had appeared in the Hindustan Times in its Chandigarh edition published on 28.12.2003. Last of all, it is submitted, that the entire controversy has been raised by the petitioners only because, during the course of investigation made at the hands of the Commission of Inquiry, constituted on the basis of the notification dated 2.1.2004, Leonard A. Freeke

mentioned as one of the main persons involved in the controversy, had not been permitted to depose before the Commission of Inquiry. In the absence of inputs which could have been given by Leonard A. Freeke, the petitioners have challenged the report of the Commission through a novel method i.e. by filing a public interest litigation. This too, according to learned counsel for the respondents, does not justify the filing of a public interest litigation.

70 In order to substantiate the contentions noticed in the foregoing paragraphs, learned counsel for respondent No.4 has placed reliance on T.N. Godavarman Thirumulpad V. Union of India and others (2006) 5 SCC 28 and invited this Court's attention to the following observations recorded by the Apex Court therein:-

> " It has been repeatedly held by this Court that none has a right to approach the court as a public interest litigant and that court must be careful to see that the member of the public who approaches the court in public interest, is acting bona fide and not for any personal gain or private profit or political motivation or other oblique considerations. (See S.P. Gupta V. Union of India, 1981 Supp SCC 87).
>
> For the last few years, inflow of public interest litigation has increased manifold. Considerable judicial time
>
> is spent in dealing with such cases. A person acting bona fide alone can approach the court in public interest. Such a remedy is not open to an unscrupulous person who acts, in fact, for someone else. The liberal rule of locus standi exercised in favour of bona fide public interest litigants has immensely helped the cause of justice. Such litigants have been instrumental in drawing attention of this Court and High Courts in matters of most importance and in securing orders

> and directions for many underprivileged such as, pavement-dwellers, bonded labour, prisoners' conditions, children, sexual harassment of girls and women, cases of communal riots, innocent killings, torture, long custody in prison without trial or in the maters of environment, illegal stone quarries, illegal mining, pollution of air and water, clean fuel, hazardous and polluting industries or preservation of forest as in Godavarman (1) case. While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that courts should not allow their process to be abused by a mere busybody or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration. (See Janata Dal V. H.S. Chowdhary (1992) 4 SCC 305).
>
> It seems that this caution has not had the desired effect on the applicant like the present one."

Reliance has also been placed on the decision rendered by the Supreme Court in Dattaraj Nathuji Thaware V. State of Maharashtra and others (2005) 1 SCC 590, wherein the Court held as under:-

> " When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, the said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public interest litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "paise income litigation". The High Court has found

that the case at hand belongs to the last category. If not properly regulated and abuse averted, it becomes also a tool in a unscrupulous hands to release vendetta and wreak vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of a knight errant borne out of wishful thinking. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in Janata Dal V. H.S. Chowdhary (1992) 4 SCC 305 and Kazi Lhendup Dorji V. CBI, 1994 Supp (2) SCC 116. A writ petitioner who comes to the court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. (See Ramjas Foundation V. Union of India, 1993 Supp (2) SCC 20 and K.R. Srinivas V. R.M. Premchand, (1994) 6 SCC 620.

... ...

Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products

of mischief. It should be aimed at redressal of genuine public wrong or public injury and not be publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or member of the public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of motives, and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

....

The court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike a balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The court has to act ruthlessly while dealing with impostors and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of

pro bono publico, though they have no interest of the public or even of their own to protect.

... ...

As noted supra, a time has come to weed out petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilised for disposal of genuine cases. Though in Duryodhan Sahu (Dr.) V. Jitendra Kumar Mishra (1998) 7 SCC 273 this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Apart from the sinister manner,if any, of getting such copies, the real brain or force behind such cases would get exposes to find out the truth and motive behind the petition. Whenever such frivolous pleas, as noted, are taken to explain possession, the court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions

> and dismiss them with costs as aforestated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts."

Next in order of reference, learned counsel for respondent No.4 relied on the decision rendered by the Apex Court in Dr. B. Singh and others V. Union of India, 2004(3) SCC 363, wherein the Court observed as under:-

> " Before we go into the desirability of even entertaining such a petition, background in which the petition has been filed needs to be noticed.
>
> According to the petitioner, as reflected in the petition, basis of the petition is a copy of the representation purported to have been received from one Ram Sarup which was addressed to the President of India with copies to the Chief Justice of India, Ministry of Law Justice, Chief Justice of the Punjab and Haryana High Court, Governor of Haryana and Bar Council of India wherein allegations were made against Respondent 3. Only on the basis of what is stated therein of which apparently the petitioner himself cannot legitimately claim to have any personal knowledge the petitioner filed a writ petition before the Punjab and Haryana High Court which was dismissed. The petitioner makes a grievance that the aforesaid Ram Sarup had received acknowledgment of the representation addressed to the President of India wherein it was also noted that the same had been forwarded to the Secretary to the Government of India, Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) for appropriate action. But no action was taken to look into the allegations. It is not clear from the writ petition as to whether the petitioner had sent any representation to the President and other constitutional functionaries as the enclosures to the writ petition show that the aforesaid Ram Sarup had sent representations to the President with copies to the other functionaries. The copy of the representation dated

18.10.2003 shows that it was sent by Ram Sarup. The second representation is dated 13.12.2003 in which reference has been made to a representation purported to be dated 28.11.2003. In the representation dated 13.12.2003 reference is made to the acknowledgement dated 12.11.2003. This creates an impression that the acknowledgement dated 12.11.2003, of the President's Secretariat relates to the representations sent by Ram Sarup. But the cop0y of purported acknowledgement filed as Annexure P-2 shows as if it was sent by the petitioner. No copy of any representation dated 28.10.2003 as indicated in Annexure P-2 has been filed along with the petition. The petition nowhere has stated that he has any personal knowledge of the allegations made against Respondent No.3.He does not even aver that he made any effort to find out whether the allegations have any basis. He only refers to the representation of Ram Sarup and some paper cuttings of news items. He has not indicated as to whether he was aware of the authenticity or otherwise of the news items. It is too much to attribute authenticity or credibility to any information or fact merely because it found publication in a newspaper or journal or magazine or any other form of communication, as though it is gospel truth. It needs no reiteration that newspaper reports per se do not constitute legally acceptable evidence. Strangely, in the affidavit accompanying the writ petition he has stated as follows:-

> "That I have read over the contents of accompanying writ petition pp.1 to 13, paras 1 to 18, synopsis and list of dates, pp. A to C and I say that the same are true and correct on knowledge and based on the record of the case."

The affidavit shows that the contents were true and correct to his knowledge and based on records. Strangely, it has not been indicated as to what is the source of his knowledge and

> is based on what records. Even the copy of the order passed by the Punjab and Haryana High Court where he filed writ application on allegedly identical issues, as indicated in the petition, has not been annexed. The casual and cavalier fashion in which it appears to have been handled and of late attempted to be made ipse dixit in a laconic and lackadaisical manner compels us to draw the only inference that the petitioner is a busybody bent upon self-publicity sans any sense of responsibility unmindful of the adverse impact, at times it may go to create at the expense of decency and dignity of constitutional offices and functionaries and there is no element or even trace of public interest involved in the petition."

Last of all, learned counsel for respondent No.4 placed reliance on the decision rendered by the Supreme Court in Neetu V. State of Punjab and others, JT 2007(1) SC 452 and invited this Court's attention to the following observation recorded therein:-

> " It is depressing to note that on account of such trumpery proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievance go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and substantial rights and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years,

> persons suffering from undue delay in service matters – government or private, persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders etc. etc. are all standing in a long hope of getting into the courts and having their grievance redressed, the busy bodies meddlesome interlopers, wayfarers or real public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the courts by filing vexatious and frivolous petitions of luxury litigants who have nothing to loose but trying to gain for nothing and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the court never moves, which piquant situation creates frustration in the minds of the genuine litigants.
>
> ....
>
> When a particular person is the object and target of a petition styled as PIL, the court has to be careful to see whether the attack in the guise of public interest is really intended to unleash a private vendetta, personal grouse or some other mala fide object."

71 It would be pertinent to mention that the instant submissions were advanced by the Additional Solicitor General of India, in the nature of a preliminary objection, at the commencement of the hearing. The issue was reagitated by Shri R.S.Cheema, Senior Advocate and Advocate General, Punjab, after he responded to the submissions advanced by the learned counsel for the petitioners, on merits i.e. at the fag end of the deliberations on the controversy. Our initial impression, at the commencement of hearing, was that the petitioners, who are eight

Members of Parliament, could not be considered to be impostors or busybodies or meddlesome interlopers, impersonating as public spirited holy-men. It is not as if the aforesaid impression has undergone any change during the course of hearing. In a democratic form of government, the representatives of the people are required to air the views of the people. A public cause initiated by the representatives of the people, cannot be described as a cause initiated by persons of doubtful credentials. We find no prima facie defect in the credentials of the petitioners, who have initiated the instant controversy, as a cause in public interest. There can also be no doubt that the cause raised in the instant writ petition was not based on any vague or indefinite information. As has been noticed hereinabove, the newspaper article which appeared in the Chandigarh edition of the Hindustan Times dated 28.12.2003 created a political storm in the State of Punjab, whereupon public demands were raised for holding investigations into the allegations levelled in the article and a further demand that the guilty be punished. It is, therefore, that the State Government through a notification dated 2.1.2004 constituted a Commission of Inquiry under the Commission of Inquiry Act, 1952, to enquire into the truthfulness or otherwise of the allegations contained in the article, referred to above. It is, therefore, apparent, that the controversy raised by the petitioners was based on a definite sequence of facts narrated in a newspaper report, which had created a political storm in the State of Punjab. In the aforesaid view of the matter, it is also natural to further conclude, that the controversy was based on serious allegations, having grave implications. There can be no doubt that the allegations contained in the newspaper article were levelled

against Captain Amarinder Singh (respondent No.6), the then Chief Minister of Punjab, and his son Raninder Singh (respondent No.7). Even though the rival parties in the instant writ petition are also political rivals, yet that by itself, is not sufficient to conclude, that the initiation of the litigation at the hands of the petitioners was based on oblique motives or political considerations or to release vendetta or to wreak vengeance against political rivals. This conclusion of ours is based primarily on the fact, that it is not even the case of the respondents that the newspaper article, which appeared in the Hindustan Times published on 28.12.2003, was the handiwork of the petitioners, or had been manoeuvred/initiated at their behest.

72 The effective prayer made on behalf of the petitioners during the course of arguments was, that the findings recorded by the Commission of Inquiry in its report dated 17.12.2004 should be set aside, and the entire matter be got investigated through the Central Bureau of Investigation, no not because it was only an independent investigating agency, but also because it had appropriate means to carry out an effective the investigation, as bits of information were required to be collected even from foreign countries. In the aforestated circumstances, keeping in mind the allegations of corruption, misuse of authority and the like, "hawala" transactions etc., levelled against persons holding high positions of authority (who could have easily thwarted a fair and just investigation into the allegations) there was nothing wrong about the petitioners claiming an independent and impartial investigation at the hands of the Central Bureau of Investigation. At the beginning of the hearing, we were of the view, that it would be inappropriate for us to

shirk from the responsibility of adjudicating upon the mater, as by doing so, we would be indirectly negating the claim raised on behalf of lacs and lacs of people (who were being represented through the petitioners) in the instant writ petition.

73 We considered it our bounden duty to go to the root of the matter, in order to determine the propositions canvassed on behalf of the petitioners. Now that we have adjudicated upon the matter on the merits of the claim raised by the petitioners, would it be in the fitness of matters for us to change our mind and record a different conclusion after hearing the learned counsel representing the State of Punjab merely because on merits we did not accept the pleas advanced on behalf of the petitioners. The answer necessarily has to be in the negative.

74 In the facts and circumstances of the case, as were projected by the petitioners, it would have been most unfair for us to have declined to entertain the instant writ petition. We could have only done so by holding that the petitioners were busybodies, meddlesome, interlopers and way farers, or by holding that the petitioners were pursuing a political campaign for oblique consideration. It did not even once, during the entire course of hearing, seem to be so. It was also not possible for us to conclude, that the issues being canvassed were either vague or indefinite, or that, the petitioners were levelling wild and reckless allegations at their rivals. All along we felt that the petitioners were pursuing a cause on behalf of the masses they represent, as well as, on account of the position they held. We are, therefore, of the considered opinion that in the facts and circumstances of the case, the instant petition deserved to have been entertained as a public interest litigation.

75 Having recorded our conclusions on the submissions advanced on behalf of the petitioners, as well as, those canvassed before us on behalf of the respondents, we consider it appropriate to deal with an issue which came to our mind on the basis of the submissions made before us by learned counsel for the rival parties. According to the learned counsel for the petitioners, as well as the respondents, findings recorded by a Commission of Inquiry, as the one constituted by the State Government through its notification dated 2.1.21004, are not of a binding nature. Learned counsel for the petitioners had invited our attention to a number of decisions rendered by the Supreme Court on the issue, so as to substantiate his contention, that the determination by the Commission of Inquiry through its report dated 17.12.2004, as well as, the acceptance thereof by the Punjab Legislative Assembly on 13.10.2005 cannot be a sufficient justification for not conducting a further investigation into the matter at the hands of an independent investigating agency. The same proposition was canvassed by the learned counsel for the respondents in order to assert, that the action of the petitioners in impugning the notification dated 2.1.2004, vide which the Commission of Inquiry was set up by the State Government, under the provisions of the Commissions of Inquiries Act, 1952, as well as, the enquiry report submitted by the said Commission on 17.12.2004, was an effort in futility, because the findings of the Commission are not of a binding nature and have no evidentiary value. According to the learned counsel for the respondents, a challenge raised to something, which has no binding character, is a misconceived challenge. In the aforesaid context, learned counsel for the respondents had also invited the Court's attention to some more judgments rendered by

the Apex Court.

76 As a matter of discretion, we have picked up some of the judgments relied upon by the learned counsel for the rival parties, to canvass the proposition, noticed hereinabove. The Apex Court in R.K. Dalmia V. Justice Tendolkar and others, AIR 1958 SC 538, held as under:-

> "... As has been stated by the High Court itself in the later part of its judgment, the only power that the Commission has is to inquire and make a report and embody therein its recommendations. The Commission has no power to adjudication in the sense of passing an order which can be enforced proprio vigore. A clear distinction must, on the authorities, be drawn between a decision which, by itself, has no force and no penal effect and a decision which becomes enforceable immediately or which may become enforceable by some action being taken. Therefore, as the Commission we are concerned with is merely to investigate and record its findings and recommendations without having any power to enforce them, the inquiry or report cannot be looked upon as a judicial inquiry in the sense of its being an exercise of judicial function properly so called...."

The Supreme Court in Kehar Singh and others V. State (Delhi Administration), (1988) 3 SCC 609, as under:-

> " The Commission under our Act is given the power to regulate its own procedure and also to decide whether to sit in camera or in public. A Commission appointed under the Act does not decide any dispute. There are no parties before the Commission. There is no lis. The Commission is not a Court except for a limited purpose. The procedure of the Commission is inquisitorial rather than accusatorial. The Commission more often have to give assurance to persons

> giving evidence before it that their statements will not be used in any subsequent proceedings except for perjury. Without such an assurance, the persons may not come forward to give statements. If persons have got lurking fear that their statements given before the Commission are likely to be used against them or utilised for productive use on them in any other proceeding, they may be reluctant to expose themselves before the Commission. Then the Commission would not be able to perform its task. The Commission would not be able to reach the nuggets of truth from the obscure horizon. The purpose for which the Commission is constituted may be defeated."

The Supreme Court in Sham Kant V. State of Maharashtra, 1992 Supp (2) SCC 521, held as under:-

> " The findings of the Commission of Inquiry that there is no reliable and independent material to hold that Ratiram was ill-treated in police custody and the injuries found on him possibly might have been sustained by him prior to his arrest is not binding on this Court when the Court has arrived to its own conclusion on the independent assessment of the persuasive evidence that Ratiram was subjected to ill treatment by the appellant for extorting a confession or any information leading to the detection of the brass idol and other stolen articles. In fact, the circumstances veering the case and the numerous injuries found on the deceased Ratiram and PW13, bearing mute and chilling testimony to the police brutality demonstrably establish the prosecution case as against the appellant."

The Apex Court in T.T. Antony V. State of Kerala and others, AIR 2001 SC 2637, after noticing a number of its earlier decisions, held as under:-

> " In Ram Krishna Dalmia V. Justice S.R. Tendolkar, 1959 SCR 279: (AIR 1958 SC 538), a Constitution Bench of

this Court while considering the constitutional validity of the Commissions of Inquiry Act, indicated that the Commission is merely to investigate, record its findings and make its recommendations which are not enforceable proprio vigore and that the inquiry or report cannot be looked upon as judicial inquiry in the sense of its being an exercise of judicial function properly so called. The recommendations of the Commission of Inquiry, are of great importance to the Government in order to enable it to make up its mind as to what legislative or administrative measures should be adopted to eradicate the evil found or to implement the beneficial objects it has in view. It would be appropriate to notice the following observations of the Constitution Bench:-

"But seeing that the Commission of Inquiry has no judicial powers and its report will purely be recommendatory and not effective proprio vigore and the statement made by any person before the Commission of Inquiry is, under Section 6 of the Act, wholly inadmissible in evidence in any further proceedings, civil or criminal, there can be no point in the Commission of Inquiry making recommendations for taking any action "as and by way of securing redress or punishment" which, in agreement with the High Court, we think, refers, in the context, to wrongs already done or committed, for redress or punishment for such wrongs, if any, has to be imposed by a Court of law properly constituted exercising its own discretion on the facts and circumstances of the case and without being in any way influenced by the view of any person or body howsoever august or high powered it may be."

In the State of Karnataka V. Union of India, 1977(4) SCC 608: (AIR 1978 SC 68), the observations referred to above were approved by a seven-Judge Bench of this Court.

....

It is thus seen that the report and findings of the Commission of Inquiry are meant for information of the Government. Acceptance of the report of the Commission by the Government would only suggest that being bound by the Rule of law and having duty to act fairly, it has endorsed to act upon it. The duty of the police – investigating agency of the State – is to act in accordance with the law of the land. This is best described by the learned law Lord – Lord Denning – in R.V. Metropolitan Police Commission, (1968) 1 ALL E.R. 763 at p. 769 observed as follows:-

> "I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself."

Acting thus the investigating agency may with advantage make use of the report of the Commission in its onerous task of investigation bearing in mind that it does not preclude the investigating agency from forming a different opinion under Section 169/170 of Cr.P.C. if the evidence obtained by it supports such a conclusion. In our view, the Courts civil or criminal are not bound by the report or findings of the Commission of Inquiry as they have to arrive at their ow decision on the evidence placed before them in accordance with law."

The cumulative effect of the judgments, noticed hereinabove, is clearly indicative of the fact, that the conclusions drawn by a Commission of Inquiry constituted under the provisions of the Commissions of Inquiry

Act, 1952, have no binding character.

77 In the aforesaid view of the matter, we are at a loss to understand why, in the first instance, the petitioners chose to impugn either the notification dated 2.1.2004 or the report of the Commission of Inquiry dated 17.12.2004. The course of action adopted by the petitioners is all the more ununderstandable because the petitioners were themselves aware that an investigation into the matter was being conducted by an independent investigating agency i.e. by the Enforcement Directorate under the FEMA. In the peculiar circumstances of this case, therefore, this Court will have to examine the genuineness and the bona fides on the part of the petitioners, in filing the instant writ petition. We would not have ordinarily liked to do so, on account of the fact, that the petitioners are all Members of Parliament. However, the sequence of facts narrated in the petition leaves one wonder-struck why the petitioners chose to adopt the course that they did. The question that must be answered is, whether the action initiated by the petitioners by invoking the jurisdiction of this Court under Article 226 of the Constitution of India was merely political initiative, or was a genuine pursuit for the cause of justice.

78 The submissions advanced on behalf of the respondents while canvassing the plea of delay and laches (see paragraphs 62 to 64) was the first compelling reason for us to examine the instant aspect of the matter. We have not accepted the prayer of the respondents, to throw out the instant petition for reasons of delay and laches. It is, however, quite apparent, that the petitioners were silent spectators whilst the Commission of Inquiry was holding its deliberations into the authenticity of the newspaper report dated 27.12.2003 The petitioners chose not to

participate in the deliberations before the Commission despite the Commission having issued a public notice seeking assistance in the investigative process. According to the petitioners, the Commission had wrongfully prevented Leonard A. Freeke from deposing before it. Leonard A. Freeke had at one stage agreed to appear before the Commission unconditionally. The fact that he was ready and willing to divulge relevant information and material is also apparent from his interview to a newspaper channel. If the petitioners were genuinely interested in the cause, should they not have collected the relevant material from him (Leonard A. Freeke) so as to place it before the Commission as the representatives of the people? The facts and circumstances brought to our notice while we were dealing with the second plea of res judicata advanced on behalf of the respondents (see paragraphs 65 to 68) was the second compelling reason which has prompted us to examine the instant aspect of the matter. There can be no denial that when the petitioners first approached this Court by filing CWP No.5066 of 2005, their primary prayer was to get the allegations under reference pertaining to "...foreign exchange violations and corruption investigated immediately through the Directorate of Revenue Intelligence and the Directorate of Enforcement...", or from any other independent agency like the Central Bureau of Investigation. It is, therefore, apparent, that the petitioners would be satisfied if the investigation was carried out by either of the two alternative agencies suggested by the petitioners. As a matter of fact, it was at the instance of the petitioners themselves that an investigation into the matter, had been ordered by the then Union Finance Minister Jaswant Singh when the

BJP-Akali Dal Government was in power at the Centre through the Enforcement Directorate under the FEMA. In all fairness it did not lie in the mouth of the petitioners to demand an investigation exclusively at the hands of the Central Bureau of Investigation. Possibly on having realised their aforesaid impertinence, the prayer in the instant writ petition underwent a change. In the circumstances noticed hereinabove, would it be possible to conclude that the filing of the instant writ petition was "fair"? The third reason for us to have examined the instant matter emerges from the acts of omission and commission at the hands of the petitioners in handling the episode emerging from the newspaper report dated 27.12.2003. The petitioners commenced their campaign on 20.2.2004 by raising the issue before both Houses of Parliament. An absolutely natural and normal act, at the behest of the petitioners, as the petitioners are all Members of Parliament. On 18.10.2004, the petitioners submitted a memorandum on the subject to the Prime Minister of India. The petitioners, then, knocked the doors of the Delhi High Court in the year 2005, and in the process of their continuing efforts, they approached this Court, twice over first in the year 2005 and then in the year 2006. During the entire campaign commencing from the date of publication of the newspaper report in the Hindustan Times in the year 2003 till they approached this Court in 2006, they continued to whip up the newspaper report dated 27.12.2003. A genuinely interested campaigner would have made strenuous efforts to gather data in support of the allegations, so as to hammer the issue with supporting material. Either the petitioners did not make any such efforts, or if they made such efforts, their efforts were either not fruitful or were counterproductive. It seems that the petitioners

desired to keep the issue alive, only on the strength of the facts narrated in the original article dated 27.12.2003. The obvious response to our instant analysis, at the behest of the petitioners would be, that it was neither their intention nor their desire to seek a finding on the issues in hand, from this Court, and also that it is not also within the realm of the jurisdiction of this Court, to record findings on controverted facts. Needless to mention, that the issue deliberated upon is the bona fides of the petitioners, and normal human conduct in such matters. The availability of supporting material may well have given rise to additional issues resulting into a completely different direction to the cause propounded by the petitioners. What we wish to emphasise is that the petitioners despite the authority and position occupied by them, and despite the possibility being available to them (through Leonard A. Freeke etc. as noticed hereinbefore), they pursued the instant litigation without any further personal initiative. The Commission did not examine J.E.C. Grenge, Chief Operating Officer, SMX Global Technology Service Limited, merely because he could not be served. If the petitioners were seriously interested in unveiling the truth, they could have easily traced his whereabouts so as to enable the Commission to examine him. After the Commission had concluded its proceedings, they could have still traced him for the same objective. Can this pursuit of a luxury litigation be considered as "bona fide" in the facts and circumstances of this case? Fourthly, the petitioners were seemingly never interested in the holistic determination of the truth of the allegations contained in the newspaper report dated 27.12.2003. They (the petitioners) even questioned the propriety of the Commission of Inquiry from taking into consideration a

later investigative report which was published in the Hindustan Times on 16.10.2006. On an issue as the one under reference where accusations of corruption, misuse of authority "hawala" transanctions, and the like were levelled against persons holding high positions of authority, it is of utmost importance to go to the root of the matter in order to determine the underlying truth. It is for this very reason that the three issues canvassed on behalf of the respondents were brushed aside by us, so as to be able to take up the issues canvassed on behalf of the petitioners and examine the merits thereof. The petitioners, however, seem to have viewed the matter in a different perspective. Can the petitioners perspective be deemed to be an effort "towards the cause of justice"? Although there are a host of other issues which can be examined in the context of this issue, we would like to highlight only one further aspect of the matter, the fifth in this sequence of narration, which to our mind, projects the entire matter in a different context. During the course of hearing, learned counsel for the petitioners had made reference to the address at the hands of Shri Parkash Singh Badal, the then leader of the opposition (and the present Chief Minister of State of Punjab) on the floor of the Punjab Legislative Assembly on 13.19.2003 when the report of the Commission of Inquiry dated 17.12.2004, along with the action taken report, came up for consideration. Derogatory references were made in respect of Justice B.S. Nehra (a retired Judge of this Court), who was appointed as the Commission of Inquiry through the notification dated 2.1.2004. An extract from the statement of Shri Parkash Singh Badal projecting the aforesaid remarks has been reproduced in paragraph 38 hereinabove. It is not for us to make any comments in respect of the aforestated

observations, except that the said address did not include any material to authenticate his allegations against a respected retired member of the judicial fraternity. Can the instant initiative, in view of the factual position noticed above, be considered as a "honest" effort at the behest of the petitioners, to go to the root of the matter?

79 We have raised various questions in the foregoing paragraph in our desire to record a finding on the issue of bona fides at the hands of the petitioners in initiating the instant process of litigation. In exercise of our judicial restraint, we do not desire to record any finding on the matter, and not even in respect of various queries posed in the foregoing paragraph. One should not overlook the fact that the instant process of litigation has taken up enormous time during Court hours and manifolds more time in the process of compilation of the instant judgment. All that needs to be recorded is that the filing of the instant writ petition may not have been as innocent as it has been projected. Possibly one step more than was necessary.

80 We have dealt with five different issues canvassed on behalf of the petitioners. Our conclusions thereon are summarized hereunder:-

Firstly, the constitution of the Commission of Inquiry under the Commission of Inquiries Act vide notification dated 2.1.2004, was well within the competence of the State Government.

Secondly, the setting up of the Commission of Inquiry under the provisions of the Commission of Inquiries Act, 1952, was for a public purpose, and that, the constitution of the Commission of Inquiry was fully justified in terms of the mandate of section 3 of the Commission of Inquiry Act, 1952.

Thirdly, in recording its findings in respect of the truthfulness or otherwise of the allegations contained in the newspaper report published in the Chandigarh edition of the Hindustan Times dated 28.12.2003, the action of the Commission in having taken into consideration the subsequent newspaper report, which appeared in the Hindustan Times, on 16.11.2004, did not transgress the authority vested in the Commission of Inquiry vide the notification dated 2.1.2004.

Fourthly, the Commission of Inquiry did not commit any irregularity in not examining Leonard A. Freeke, during the course of the process of its deliberations. And it certainly does not lie in the mouth of the petitioners to raise the instant issue.

Fifthly, the Enforcement Directorate of the FEMA besides being an independent investigating agency also has the means of effectively conducting the probe on the issues involved and as such there is no justification in the petitioners' prayer that the matter be got investigated only through the Central Bureau of Investigation. The Enforcement Directorate which has almost completed the investigation, is directed to complete the exercise at the earliest and compile its report without being influenced by the conclusions drawn in the report of the Commission of Inquiry dated 17.12.2004.

The respondents have raised three contentions. Our findings in respect thereof are as under:-

Firstly, there is no merit in the contention of the respondents, that the instant writ petition deserves to be dismissed summarily on the plea of delay and laches.

Secondly, there is no merit in the contention of the respondents that the

instant writ petition is barred in terms of the principle of res judicata under section 11 of the Code of Civil Procedure.

Thirdly, the contention on behalf of the respondents that the instant writ petition is not maintainable as a public interest litigation is devoid of merit.

Independently of the submissions noticed hereinabove, we have taken upon ourselves the task of determining the bona fides of the petitioners in having invoked the judicial process on the issues canvassed in this case. Our conclusion is as under:-

As a matter of judicial restraint all that we wish to record is that the filing of the instant writ petition may not have been as innocent as it has been projected.

For the reasons recorded above, the instant writ petition is dismissed.

(J.S. Khehar)
Judge

(S.D. Anand)
Judge

May 14, 2007.
vig